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Presidential Documents

Title 3—

The President

Memorandum of March 22, 2020

Providing Federal Support for Governors' Use of the National Guard To Respond to COVID–19

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), and section 502 of title 32, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to take measures to assist State Governors in their responses to all threats and hazards to the American people in their respective States. Considering the profound and unique public health risks posed by the ongoing outbreak of COVID–19, the disease caused by the novel (new) coronavirus known as SARS–CoV–2 (the virus), the need for close cooperation and mutual assistance between the Federal Government and the States is greater than at any time in recent history. In recognizing this serious public health risk, I noted that on March 11, 2020, the World Health Organization announced that the COVID–19 outbreak can be characterized as a pandemic. On March 13, 2020, I declared a national emergency recognizing the threat that SARS–CoV–2 poses to the Nation's healthcare systems. I also determined that same day that the COVID–19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)). To date, 50 States, the District of Columbia, 3 territories, 4 tribes, and 1 tribal nation have also declared emergencies as a result of the outbreak. All States have activated their Emergency Operations Centers and are working to fight the spread of the virus and attend to those who have symptoms or who are already infected with COVID–19. To provide maximum support to the Governors of the States of California, New York, and Washington as they make decisions about the responses required to address local conditions in each of their respective States and as they request Federal support under the Stafford Act, I am taking the actions set forth in sections 2 and 3 of this memorandum:

Sec. 2. *One Hundred Percent Federal Cost Share.* To maximize assistance to the Governors of the States of California, New York, and Washington to facilitate Federal support with respect to the use of National Guard units under State control, I am directing the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security to fund 100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that these States undertake using their National Guard forces, as authorized by sections 403 (42 U.S.C. 5170b) and 503 (42 U.S.C. 5193) of the Stafford Act.

Sec. 3. *Support of Operations or Missions to Prevent and Respond to the Spread of COVID–19.* I am directing the Secretary of Defense, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), to request pursuant to 32 U.S.C. 502(f) that the Governors of the States of California, New York, and Washington order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that FEMA issues to the Department of Defense for the purpose of

supporting their respective State and local emergency assistance efforts under the Stafford Act.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

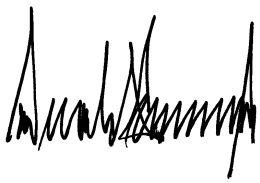
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
March 22, 2020.

[FR Doc. 2020–06476
Filed 3–25–20; 8:45 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9998 of March 23, 2020

National Agriculture Day, 2020

By the President of the United States of America

A Proclamation

Since our Nation's earliest days, farming communities have been a bedrock of our society. In a letter to George Washington, Thomas Jefferson famously stated that agriculture ''is our wisest pursuit, because it will in the end contribute most to real wealth, good morals, and happiness.'' As our Nation continues to face the unique challenges posed by the coronavirus pandemic, we pay tribute to the unbeatable strength of America's agricultural producers as they once again answer the call to feed our country and the world. On this National Agriculture Day, and now more than ever, we salute and honor the men and women who contribute daily to our national prosperity.

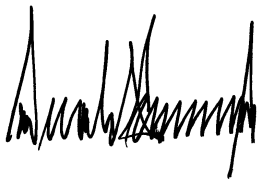
United States agricultural food and fiber production has increased significantly over the past century, while the amount of resources used to produce those goods has largely stayed the same. This incredible productivity is due to innovations that have propelled the American model of agriculture to the top of the world stage, allowing Americans to spend less of their paychecks on food. Americans feed their families with the safest, healthiest, and most affordable food in the world. Thanks to the efficiency of our farmers and ranchers, our rural communities are stronger and more resilient.

Since taking office, I have worked tirelessly to deliver on my promise to negotiate better trade deals for our country, directly benefitting agricultural communities. After decades of one-sided trade agreements that left the great men and women of our country behind, my Administration has secured fairer and more reciprocal deals that ensure American workers are put first. Our farmers, whose grit and hard work help feed, fuel, and clothe millions around the world, are key beneficiaries of these historic trade agreements. In 2019, I delivered the United States-Japan Trade Agreement, which is already providing our farmers, ranchers, and agribusinesses with new market access to 127 million Japanese consumers. In January, I ended the outdated and unbalanced North American Free Trade Agreement by signing into law the United States-Mexico-Canada Agreement (USMCA), creating incredible opportunities for American farmers and ranchers. The USMCA empowers American businesses in our vital agricultural sector with greater freedom to sell their goods throughout North America. Thanks to this better deal, American agriculture exports are expected to increase by $2.2 billion. I also signed a new, fully enforceable trade agreement with China, which will help start to rebalance our vital trade partnership. As part of this deal, China has pledged to increase imports of American goods and services over the next 2 years by at least $200 billion, including purchasing more than $80 billion in American agricultural goods.

Across our country, farming families and communities demonstrate the timeless American values of hard work, perseverance, and stewardship of the land. Just as they have for centuries, our farmers provide the foundation of a national economic supply chain that is critical to our national security and prosperity. Today and every day, we express our gratitude to these individuals and remember the central place of agriculture in our national identity and American way of life.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 24, 2020, as National Agriculture Day. I encourage all Americans to observe this day by recognizing the preeminent role that agriculture plays in our daily lives, acknowledging agriculture's continuing importance to rural America and our country's economy, and expressing our deep appreciation of farmers, growers, ranchers, producers, national forest system stewards, private agricultural stewards, and those who work in the agriculture sector across the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of March, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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Presidential Documents

Executive Order 13910 of March 23, 2020

Preventing Hoarding of Health and Medical Resources To Respond to the Spread of COVID–19

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*) (the ''Act''), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak), I declared a national emergency recognizing the threat that the novel (new) coronavirus known as SARS–CoV–2 poses to our Nation's healthcare systems. In recognizing the public health risk, I noted that on March 11, 2020, the World Health Organization announced that the outbreak of COVID–19 (the disease caused by SARS–CoV–2) can be characterized as a pandemic. I also noted that while the Federal Government, along with State and local governments, have taken preventive and proactive measures to slow the spread of the virus and to treat those affected, the spread of COVID–19 within our Nation's communities threatens to strain our Nation's healthcare systems. To further deal with this threat, on March 18, 2020, I issued Executive Order 13909 (Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID–19), in which I delegated to the Secretary of Health and Human Services (Secretary) the prioritization and allocation authority under section 101 of the Act with respect to health and medical resources needed to respond to the spread of COVID–19.

To ensure that our Nation's healthcare systems are able to surge capacity and capability to respond to the spread of COVID–19, it is the policy of the United States that health and medical resources needed to respond to the spread of COVID–19, such as personal protective equipment and sanitizing and disinfecting products, are not hoarded. Accordingly, I am delegating to the Secretary my authority under section 102 of the Act (50 U.S.C. 4512) to prevent hoarding of health and medical resources necessary to respond to the spread of COVID–19 within the United States. I am also delegating to the Secretary my authority under the Act to implement any restrictions on hoarding, including my authority under section 705 of the Act (50 U.S.C. 4555) to gather information, such as information about how supplies of such resources are distributed throughout the Nation.

Sec. 2. *Delegation of Authority to Prevent Hoarding.*

(a) The Secretary is delegated the following:

(i) the authority of the President conferred by section 102 of the Act to prevent hoarding of health and medical resources necessary to respond to the spread of COVID–19 within the United States, including the authority to prescribe conditions with respect to the accumulation of such resources, and to designate any material as a scarce material, or as a material the supply of which would be threatened by persons accumulating the material either in excess of reasonable demands of business, personal, or home consumption, or for the purpose of resale at prices in excess of prevailing market prices; and

(ii) the authority of the President to implement the Act contained in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560).

(b) In exercising the authority delegated under this section, the Secretary shall consult the Administrator of the Federal Emergency Management Agency.

(c) The Secretary shall adopt and revise appropriate rules and regulations as may be necessary to implement this order.

Sec. 3. *Secretarial Duty Concerning Notices of Withdrawal of Designation.* The Secretary shall periodically consider whether the designations made pursuant to section 2 of this order remain necessary. Upon finding that the need for such designation of material is no longer necessary, the Secretary shall promptly publish a notice of withdrawal of the designation in the *Federal Register*, and in such other manner as the Secretary deems appropriate.

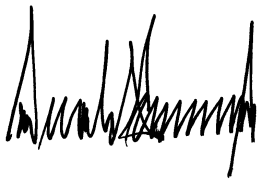
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
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Rules and Regulations

Federal Register
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FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. R–1706]

RIN 7100–AF80

Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations: Eligible Retained Income

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for comments.

SUMMARY: In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 (COVID–19) and current strains in U.S. financial markets, the Board is issuing an interim final rule that revises the definition of eligible retained income for purposes of the Board's total loss-absorbing capacity (TLAC) rule. The revised definition of eligible retained income will make any automatic limitations on capital distributions that could apply under the TLAC rule more gradual and aligns to recent action taken by the Board and the other Federal banking agencies in the capital rule.

DATES: The interim final rule is effective March 26, 2020. Comments on the interim final rule must be received no later than May 11, 2020.

ADDRESSES: You may submit comments, identified by Docket No. R–1706; 7100–AF80, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, Associate Director, (202) 530–6360, Constance Horsley, Deputy Associate Director, (202) 452–5239, Juan Climent, Manager, (202) 460 2180, Sean Healey, Lead Financial Institution Policy Analyst, (202) 912–4611, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452–2036, or Mark Buresh, Senior Counsel, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Background

In December 2016, the Board issued a final rule (TLAC rule) to require the largest domestic and foreign banking organizations operating in the United States to maintain a minimum amount of total loss-absorbing capacity (TLAC), consisting of a minimum amount of long-term debt (LTD) and tier 1 capital.[1] In addition, the TLAC rule prescribed certain buffers above the minimum TLAC amounts that could result in limitations on the capital distributions and certain discretionary bonus payments of a firm. The final rule also included a separate requirement that these companies maintain a minimum amount of LTD.

The TLAC rule applies to the largest and most systemic U.S. banking organizations (U.S. GSIBs) and the U.S. operations of the largest and most systemic foreign banking organizations (covered IHCs), because the failure or material financial distress of these companies has the greatest potential to disrupt U.S. financial stability (collectively, covered companies).[2]

The TLAC and LTD requirements in the final rule build on, and serve as a complement to, the regulatory capital requirements in the Board's capital rule.[3] Banking organizations subject to the capital rule must maintain a minimum amount of regulatory capital and maintain a capital buffer above the minimum capital requirements in order to avoid restrictions on capital distributions and discretionary bonus payments.[4] The requirements in the capital rule take the form of ratios of different forms of regulatory capital to risk-based and leverage-based measures of assets.

The requirements of the TLAC rule are based on many of the same measures as those that are in the capital rule. For example, the TLAC requirements are based on the risk-based and leverage-

[1] 82 FR 8266 (January 27, 2017); 12 CFR part 252, subparts G and P.

[2] *See* 12 CFR 252.60; 12 CFR 252.160.

[3] While capital rule's requirements are intended to ensure that a banking organization has sufficient capital to remain a going concern, the objective of the TLAC rule is to reduce the financial stability impact of the failure of a covered company by requiring sufficient loss-absorbing capacity on both a going concern and a gone-concern basis. A firm's regulatory capital, and especially its equity capital, is likely to be significantly or completely depleted in the lead up to a bankruptcy or resolution. Thus, if a firm is to re-emerge from resolution with sufficient capital to successfully operate as a going concern, there must be a source of capital for the firm. The TLAC rule therefore requires covered companies to maintain LTD because LTD can absorb losses and serve as a source of capital in resolution.

[4] *See* 12 CFR part 217.

based measures used in the capital rule and the TLAC rule also includes buffer requirements in addition to the minimum TLAC requirements (TLAC buffer requirements) that function in a manner similar to the buffer requirements in the capital rule.

As with the capital rule, the TLAC buffer requirements were established to encourage better capital conservation by covered companies and to enhance the resilience of the banking system during stress periods.[5] In particular, the TLAC buffer requirements were intended to limit the ability of covered companies to distribute capital in the form of dividends and discretionary bonus payments and therefore strengthen the ability of covered companies to continue lending and conducting other financial intermediation activities during stress periods. A covered company with TLAC levels that fall short of the TLAC buffer requirements faces limitations on capital distributions and discretionary bonus payments, in a manner designed to parallel the restrictions on capital distributions and discretionary bonus payments under the capital rule.

II. The Interim Final Rule

The Board, together with the other federal banking agencies (collectively, the agencies), recently revised a core aspect of the buffer requirements in the capital rule, the definition of ''eligible retained income.'' [6] The Board is now issuing this interim final rule to carry over this change to the TLAC buffer requirements.

Before these revisions to the capital rule, the limitations on capital distributions could have been sudden and severe if a banking organization was to experience even a modest reduction in its capital ratios, undermining the ability of the banking organization to use its capital buffers. This same concern applies to covered companies and the TLAC buffer requirements because, as noted, the TLAC buffers uses the former definition of eligible retained income.

The interim final rule revises the definition of eligible retained income under the TLAC rule to be consistent with the recently revised definition of eligible retained income in the capital rule. By modifying the definition of eligible retained income and thereby allowing covered companies to use their capital buffers in a more gradual manner, the interim final rule should help to promote lending activity and other financial intermediation activities by covered companies and avoid compounding negative impacts on the financial markets.[7]

Under the TLAC rule, if a covered company's TLAC levels fall within its TLAC buffer requirements, the maximum amount of capital distributions and discretionary bonus payments it can make is a function of its eligible retained income. The original definition of eligible retained income under the TLAC rule, as under the capital rule, was four quarters of net income, *net* of distributions and associated tax effects not already reflected in net income. Under a benign business environment, some covered companies may decide to distribute all or nearly all of their net income. Because the measure of eligible retained income subtracts capital distributions made during the previous year, a period of sudden stress following a period of relatively benign conditions could result in very low or zero eligible retained income. In this or similar scenarios, a covered company could face sudden and severe distribution limitations even if its TLAC ratio only marginally falls below applicable buffer requirements.

Recent events have suddenly and significantly impacted financial markets. The spread of COVID–19 has disrupted economic activity in many countries. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain. In light of these developments, covered companies may realize a sudden, unanticipated drop in capital ratios. This could create a strong incentive for covered companies to limit their lending and other financial intermediation activities in order to avoid facing abrupt limitations on capital distributions.

To better allow a covered company to continue lending during times of stress, the Board is issuing the interim final rule to revise the definition of eligible retained income in the TLAC rule to the greater of (1) a covered company's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a covered company's net income over the preceding four quarters. This definition will apply with respect to all of the TLAC buffer requirements under the TLAC rule.[8] This definition is consistent with the recently revised definition of eligible retained income in the capital rule.[9]

This interim final rule is intended to facilitate use by a covered company of its TLAC buffers as intended and serve as a financial intermediary and source of credit to the economy. As noted, this revision would reduce the likelihood that a covered company is suddenly subject to abrupt and restrictive distribution limitations in a scenario of lower than expected TLAC levels.

Question 1: What would be the advantages and disadvantages of defining eligible retained income as the average of a covered company's net income over the preceding four quarters instead of the greater of (i) a covered company's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (ii) the average of a covered company's net income over the preceding four quarters?

Question 2: Under what circumstances, if any, should a covered company be restricted from making any capital distributions?

III. Impact Assessment

As discussed above, the revised definition of eligible net income in the interim final rule allows a covered company to more gradually reduce distributions as it enters stress, and provides a covered company with stronger incentives to continue to lend in such a scenario. On the other hand, by enabling a covered company to gradually decrease capital distributions as it enters stress (rather than mandating a sharp decrease), the rule could incrementally reduce the covered company's loss-absorption capacity in stress.

The definition of eligible retained income affects the distributions of covered companies with TLAC levels within their TLAC buffer requirements. It does not have an impact on minimum TLAC or LTD levels, *per se.* As such, the revised definition of eligible retained income in the interim final rule is not likely to have any noticeable effect on the TLAC or LTD requirements applicable to covered companies.

[5] 78 FR 62018, 62034 (Oct. 11, 2013).

[6] 85 FR 15909 (March 20, 2020).

[7] The interim final rule does not make changes to any other rule or regulation that may limit capital distributions or discretionary bonus payments by covered companies.

[8] Under the TLAC rule, a U.S. GSIB is subject to the external TLAC risk-weighted buffer, which sits above the minimum risk-based TLAC requirement, and the external TLAC leverage buffer, which sits above the minimum total-leverage exposure-based TLAC requirement. 12 CFR 252.63(c). Similarly, a covered IHC is subject to covered IHC TLAC buffer, which sits above the minimum risk-based TLAC requirement. 12 CFR 252.165(d).

[9] 85 FR 15909 (March 20, 2020).

IV. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA)).[10] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11]

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the spread of COVID–19 has disrupted economic activity in the United States. In addition, U.S. financial markets have featured extreme levels of volatility. The magnitude and persistence of COVID–19 on the economy remain uncertain. In light of the current market uncertainty, covered companies have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on distributions. By making the automatic limitations on a covered company's distributions more gradual as the covered company's TLAC levels decline, the interim final rule would allow covered companies to focus on continuing to lend to creditworthy households and businesses rather than on managing their TLAC levels and reducing the potential of exacerbating negative impacts on the financial markets. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[12]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[13] Because the rule relieves a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.[14]

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[15] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[16]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[17]

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[18] In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest. In addition, as discussed above, the revised definition of eligible retained income in the interim final rule is not likely to have any significant effect on the requirements of the TLAC rule.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA), an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has reviewed this interim final rule pursuant to authority delegated by the OMB and has determined that it does not contain any collections of information pursuant to the PRA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [19] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[20] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [21] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?

[10] 5 U.S.C. 553.

[11] 5 U.S.C. 553(b)(3)(B)

[12] 5 U.S.C. 553(b)(3)(B); 553(d)(3).

[13] 5 U.S.C. 553(d).

[14] 5 U.S.C. 553(d)(1).

[15] 5 U.S.C. 801 *et seq.*

[16] 5 U.S.C. 801(a)(3).

[17] 5 U.S.C. 804(2).

[18] 5 U.S.C. 808.

[19] 5 U.S.C. 601 *et seq.*

[20] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[21] 12 U.S.C. 4809.

• Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, banking, Credit, Federal Reserve System, Holding companies, Investments, Qualified financial contracts, Reporting and recordkeeping requirements, Securities.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart G—[Amended]

■ 2. Section 252.63 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 252.63 External total loss-absorbing capacity requirement and buffer.

* * * * *

(c) * * *

(2) * * *

(i) *Eligible retained income.* The eligible retained income of a global systemically important BHC is the greater of:

(A) The global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter.

* * * * *

Subpart P—[Amended]

■ 3. Section 252.165 is amended by revising paragraph (d)(2)(i) to read as follows:

§ 252.165 Covered IHC total loss-absorbing capacity requirement and buffer.

* * * * *

(d) * * *

(2) * * *

(i) *Eligible retained income.* The eligible retained income of a Covered IHC is the greater of:

(A) The Covered IHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the Covered IHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 23, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–06371 Filed 3–24–20; 4:15 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket Number: 200320–0083]

RIN 0625–AB19

Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

ACTION: Temporary final rule.

SUMMARY: The Department Commerce (Commerce)'s Enforcement and Compliance Unit (E&C) is temporarily modifying certain requirements for serving documents containing business proprietary information in antidumping and countervailing duty (AD/CVD) cases to facilitate the effectuation of service through electronic means. The goal is to promote public health and slow the spread of COVID–19. These temporary modifications will be in place until May 19, 2020, unless extended.

DATES: *Effective* March 24, 2020, through 17:00 hours EST, May 19, 2020.

FOR FURTHER INFORMATION CONTACT: Evangeline D. Keenan, Director, APO/Dockets Unit, at 202–482–3354.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent COVID–19 outbreak, the U.S. Government is encouraging American citizens to work from home whenever possible. The service requirements in E&C's regulations are often effectuated by hand delivery or by U.S. mail delivery of hard copy documents, which often takes place in an office setting. In turn, this poses a risk to the personnel tasked with serving or accepting service by hand or mail, as well as those around them. Accordingly, Enforcement & Compliance (E&C) will temporarily deem service of submissions containing business proprietary information (BPI) to be effectuated when the BPI submissions are filed by parties in ACCESS (E&C's online document portal), with certain exceptions, with the goal of promoting public health and slowing the spread of COVID–19 while at the same time permitting the continued administration of antidumping and countervailing duty proceedings.

In general, 19 CFR 351.303(f)(1) states that a person filing a document with Commerce simultaneously must serve a copy of the document on all relevant persons by personal service or first class mail. 19 CFR 351.303(f)(3) provides that case and rebuttal briefs must be made by personal service, overnight mail, courier, or in the case of service outside the United States, by first class airmail. E&C is temporarily modifying the means by which a person may serve documents containing BPI, as follows.

For BPI documents submitted with final bracketing on the due date (*i.e.,* documents not submitted under the one-day lag rule, 19 CFR 351.303(c)(2)(i)), E&C will deem service to be effectuated upon the filing of the submission in ACCESS. E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

For BPI documents submitted under the one-day lag rule, 19 CFR 351.303(c)(2)(i), E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS of the complete

final BPI document on the next business day under 19 CFR 351.303(c)(2)(ii). This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

For case and rebuttal briefs served pursuant to 19 CFR 351.303(f)(3)(i), service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect). This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

Notwithstanding the modifications described above, parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with 19 CFR 351.306(c)(2). However, E&C is temporarily modifying the electronic service provision under 19 CFR 351.303(f)(1)(ii), so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent. The document must not contain the business proprietary information of other parties.

Exceptions to Temporary Modifications

The following types of submissions and scenarios require the normal means of service as required by section 19 CFR 351.303(f) of E&C regulations, as ACCESS cannot effectuate service:

Requests for administrative review, new shipper review, changed circumstances review and expedited review. Service lists for these segments are not yet established at the time of filing of the relevant request. The service requirements under 19 CFR 351.303(f)(3)(ii) continue to apply.

Requests for scope ruling or anti-circumvention inquiry. These requests require service on the comprehensive scope service lists in accordance with 19 CFR 351.225(n).

E&C is not modifying the applicable requirements for serving public documents and public versions at this time, see 19 CFR 351.303(f)(1)(ii), which permit electronic service of public documents and public versions, provided that the receiving party consents.

Classification

Administrative Procedure Act

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause because they would be impracticable and contrary to the public interest. (See 5 U.S.C. 553(b)(B)). Interested parties participating in E&C's antidumping and countervailing duty proceedings are generally required to serve other interested parties with documents they submit to E&C. If notice and comment were to be allowed, parties submitting documents containing BPI information to E&C likely either would be unable to serve other parties in the manners proscribed in E&C's regulations or potentially would put their health and safety at risk in doing so. COVID–19 was unexpected and this circumstance could not have been foreseen; therefore E&C could not have prepared ahead of time for this set of circumstances. The provision of the Administrative Procedure Act otherwise requiring a 30-day delay in effectiveness is also waived for those same reasons, which constitute good cause. (5 U.S.C. 553(d)(3)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this temporary rule is not significant for purposes of Executive Order 12866.

Executive Order 13771

This temporary rule is not expected to be subject to the requirements of Executive Order 13771 because this temporary rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This temporary rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 13132

This temporary rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 19 CFR Part 351

Administrative Practice and Procedure, Antidumping, Countervailing Duties, Confidential Business Information, Reporting and Recordkeeping Requirements.

Dated: March 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. Amend § 351.303 by adding paragraph (f)(4) to read as follows:

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

* * * * *

(f) * * *

(4) Notwithstanding any other paragraph in this section, until further notice, as of March 24, 2020, we are modifying the service requirements with respect to documents containing business proprietary information as follows:

(i) For BPI documents submitted with final bracketing on the due date (*i.e.,* documents not submitted under the one-day lag rule, paragraph (c)(2)(i) of this section), E&C will deem service to be effectuated upon filing of the submission in ACCESS. E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This paragraph (f)(4)(i) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(ii) For BPI documents submitted under the one-day lag rule, paragraph (c)(2)(i) of this section, E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS

of the complete final BPI document on the next business day under paragraph (c)(2)(ii) of this section. This paragraph (f)(4)(ii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iii) For case and rebuttal briefs served pursuant to paragraph (f)(3)(i) of this section, service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. This paragraph (f)(4)(iii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iv) Parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with § 351.306(c)(2). However, E&C is temporarily modifying the electronic service provision under paragraph (f)(1)(ii) of this section, so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. Such a document must not contain the BPI of other parties. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. Such a document must not contain the BPI of other parties. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent.

(v) *Exceptions.* Notwithstanding paragraphs (f)(4)(i) through (iv) of this section, the following types of submissions and scenarios require the normal means of service as required by this paragraph (f):

(A) Requests for administrative review, new shipper review, changed circumstances review and expedited review.

(B) Requests for scope ruling or anti-circumvention inquiry.

[FR Doc. 2020–06306 Filed 3–24–20; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 117, and 507

[Docket No. FDA–2020–D–1108]

Temporary Policy Regarding Preventive Controls and Foreign Supplier Verification Programs Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency.'' The guidance communicates the Agency's intention not to enforce certain onsite audit requirements in three of our food safety regulations in certain circumstances related to the impact of the coronavirus if other supplier verification methods that are designed to provide sufficient assurance that hazards have been significantly minimized or prevented are used instead during the period of onsite audit delay.

DATES: The announcement of the guidance is published in the **Federal Register** on March 26, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1108 for ''Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–300), 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For questions relating to Current Good Manufacturing Practices (CGMP), Hazard Analysis, and Risk-Based Preventive Controls for Human Food: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jeanette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246.

For questions relating to Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals: Charlotte Christin, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7526.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency.'' We are issuing this guidance consistent with our good guidance practices regulation (§ 10.115). In accordance with § 10.115(g)(2), we are implementing the guidance immediately because we have determined that prior public participation is not feasible or appropriate. Although the guidance document is immediately in effect, FDA will accept comments at any time. The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

This guidance document concerns certain supplier verification requirements contained in three of the seven foundational regulations that we have established in Title 21 of the Code of Federal Regulations (CFR) as part of our implementation of the FDA Food Safety Modernization Act (Pub. L. 111–353). The three final regulations are entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (part 117 (21 CFR part 117)) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm334115.htm*); ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals'' (part 507 (21 CFR part 507)) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm366510.htm*); and ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (part 1, subpart L (21 CFR part 1, subpart L)) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm361902.htm*). In brief, each of these regulations requires a supply-chain or supplier verification program in certain circumstances when a supplier is controlling a hazard. In addition, each of these regulations provides for onsite audits of suppliers under certain circumstances to verify that the hazard is being controlled.

The purpose of the guidance is to state the current intent of FDA, in certain circumstances related to the impact of the coronavirus, not to enforce requirements in the three regulations to conduct onsite audits of food suppliers when other supplier verification methods are used to provide sufficient assurance that hazards have been significantly minimized or prevented, during the period of onsite audit delay.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 117 have been approved under OMB control number 0910–0751. The collections of information in part 507 have been approved under OMB control number 0910–0789. The collections of information in part 1, subpart L have been approved under OMB control number 0910–0752.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: March 17, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–05897 Filed 3–25–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 30

[190D0102DR/DS5A300000/DR.5A311.IA000119]

RIN 1076–AF13

Standards, Assessments, and Accountability System

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Education (BIE) is finalizing a rule developed using a negotiated rulemaking process, as required by the Elementary and Secondary Education Act of 1965 (ESEA or the Act), as amended by 2015 Every Student Succeeds Act (ESSA), for implementation of the Secretary of the Interior's (Secretary) responsibility to establish requirements for standards, assessments, and an accountability system for BIE-funded schools.

DATES: This rule is effective on April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Overview of the Final Rule
III. Public Comments on the Proposed Rule and Responses to Comments

A. Comments in General
B. Comments That are Directly Related to the Proposed Rule
IV. Section-by-Section Analysis
V. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866 and 13563
B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)
C. Regulatory Flexibility Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act
F. Takings (E.O. 12630)
G. Federalism (E.O. 13132)
H. Civil Justice Reform (E.O. 12988)
I. Consultation With Indian Tribes (E.O. 13175)
J. Paperwork Reduction Act
K. National Environmental Policy Act
L. Effects on the Energy Supply (E.O. 13211)

I. Background

On June 10, 2019, BIE published a proposed rule to govern how the Secretary will establish requirements for standards, assessments, and an accountability system for BIE-funded schools consistent with ESEA section 1111 on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools. *See* 84 FR 26785. During the 60-day public comment period, BIE held six tribal consultation sessions: July 11, 2019, in Albuquerque, New Mexico; July 16, 2019, in Window Rock, Arizona; July 18, 2019, in Kyle, South Dakota; July 23, 2019, in Bloomington, Minnesota; July 26, 2019, via teleconference; and July 30, 2019, in Olympia, Washington. The public comment period on the proposed rule ended on August 9, 2019.

II. Overview of the Final Rule

This Standards, Assessments, and Accountability System final rule replaces the 25 CFR part 30 regulations concerning Adequate Yearly Progress (AYP) published in the **Federal Register** on April 28, 2005, effective May 31, 2005 pursuant to the requirements of ESEA, as amended by the No Child Left Behind Act, Public Law 107–110. *See* 70 FR 22178. This final rule is being published pursuant to the requirements of ESEA, as amended by ESSA, Public Law 114–95. It is the intent of this final rule to provide simplicity, certainty, clarity, and consistency for the 174 BIE-funded schools, the students served by those schools, the parents of those students, school administrators, Tribes, and the Indian communities served by BIE-funded schools.

Among other things, in this final rule, the BIE:

- Added a definition of ''School Year'' and added language to § 30.112 to clarify a general effective date for approved alternative requirements that will allow sufficient time for planning and implementation;
- Replaced the term ''*Standards, Assessments, and Accountability System Plan (SAAP)*'' with the term ''*Agency Plan (AP)*'' throughout the rule to avoid potentially negative connotations that may be associated with the acronym ''SAAP,'' as well as to reflect that the agency plan is intended to be a living document that will not only encompass the Bureau's standards, assessments, and an accountability system, but will also cover a broader range of topics including the Bureau's guidance on Native American language content assessments, alternative requirements, and school comprehensive support and improvement activities;
- Added language to § 30.100 similar to that previously located at § 30.103(e) of the proposed rule describing the ability of tribal governing bodies or school boards to create their own Native American language academic standards and Native American language assessments that specifically references the sovereign right to use Native American languages as a medium of instruction;
- Added language at the end of § 30.103(a), similar to language recommended by the BIE's Standards, Assessments, and Accountability System Negotiated Rulemaking Committee (Committee) previously located at § 30.111(b)(7) of the proposed rule, indicating that the Secretary must periodically review and revise the requirements for the accountability system established pursuant to this part;
- Amended and clarified language in § 30.103(c) regarding consultation with stakeholders to reference the Department of the Interior's (Department) Consultation Policy;
- Revised the language in § 30.104(a) and (b) for consistency with ESEA section 1111(b)(1);
- Revised the language in § 30.104(c) to clarify this paragraph applies to content standards versus achievement standards;
- Added a new paragraph (h) to § 30.105 similar to 34 CFR 200.6, (j)–(k) regarding assessments for students in Native American language schools or programs throughout the BIE-funded school system; and
- Added language to § 30.111 and §§ 30.120 through 30.124 for consistency with ESEA section 1111(c)–(d) and to clarify requirements regarding school comprehensive support and improvement activities as well as targeted support and improvement activities.

III. Public Comments on the Proposed Rule and Responses to Comments

The BIE sought public comment on the proposed rule, as well as tribal input through a series of tribal consultation sessions. Overall, BIE heard from a wide variety of stakeholders including tribal leaders, school board members, educators, national organizations, and the public. BIE also received over 40 written comment submissions. All public comments received in response to the proposed rule are available for public inspection. To view all comments, search by Docket Number ''BIA–2016–0005'' in *https://www.regulations.gov.* The BIE has decided to proceed to the final rule stage after careful consideration of all comments. The BIE's responses to such comments are detailed below.

A. Comments in General

The BIE received a wide range of comments expressing concerns about the condition of facilities, lack of communication, the need for up-to-date computer equipment, and the various challenges that affect the everyday lives of students served by the BIE-funded schools. BIE addresses these general comments below.

Comment: Numerous commenters expressed concern that there had been a lack of communication from the BIE about the negotiated rulemaking process. Commenters also expressed a concern that the Tribes and schools were not notified in a timely manner about the tribal consultation sessions and that they had been scheduled during the summer months when schools are not in session. Commenters also expressed concern that insufficient time had been provided by the Department to review and comment on the proposed rule, nor was information provided on the details of the BIE's plans for implementing the BIE's standards, assessments and accountability plan, that will undergo a separate tribal consultation process.

Response: Establishment of this negotiated rulemaking committee occurred over the course of several years and the Bureau alerted the public of its establishment through several notices in the **Federal Register**, including those requesting nominations to the committee and providing notice of meetings. *See,* 82 FR 43199 (September 14, 2017); 82 FR 5473 (January 18, 2017); 83 FR 16806 (April 17, 2018); 83 FR 37822 (August 2, 2018); and 84 FR 3135 (February 11, 2019). The Bureau

hosted five in-person and one teleconference sessions at which stakeholders were welcomed to join. The Bureau provided advance notice of the all sessions through a listing in the proposed rule and in a letter to tribal leaders dated June 10, 2019. *See* 84 FR 26785, 26792 (June 10, 2019). Specifically, per the Department of the Interior's tribal consultation policy, the Bureau provided 30-days advanced notification to tribal leaders through a *Dear tribal leader* letter of the upcoming consultation sessions. Other stakeholders were welcomed to join the sessions in-person, with an option of attending the one webinar session. The proposed rule also followed the requirements of the Administrative Procedures Act by publishing the proposed rule in the **Federal Register**. *See* 84 FR 26785. As published, the proposed rule provided for a 60-day comment period, with a deadline for submission of comments through one of several means by the close of business on August 9, 2019. The tribal consultation sessions began 30 days into this 60-day comment period. The proposed rule was posted on both the *www.bia.gov* and *www.bie.edu* web pages. The BIE sent an all employee email on July 10, 2019, notifying staff of the upcoming tribal consultation sessions. Finally, the BIE will hold further consultations regarding the BIE's Agency Plan, which will provide stakeholders further opportunity to be involved in shaping the implementation of the BIE's requirements for standards, assessments, and accountability system.

Comment: In-person and electronic comments stated concern with the amount of time it took to establish a Negotiated Rulemaking Committee.

Response: As indicated in the **Federal Register** dated September 14, 2017, the BIE re-initiated the process to form the negotiated rulemaking committee to allow the then-incoming Administration to participate fully in the process. *See* 82 FR 43199.

Comment: Commenters expressed their concern that the Committee was not afforded adequate time to adequately address the full scope of the work with which they were tasked to complete within four meetings. In addition, some expressed great concern that the Committee was unable to reach consensus on the entire assessments section due to insufficient time.

Response: The Committee met four times over the period of September 2018 to March 2019. The Committee was originally scheduled to have three in-person meetings over the time period of September 2018 through December 2018. A fourth meeting was added at the request of the Committee held in March 2019. In addition to the four public meetings, Committee members met numerous times via teleconference as subcommittees focused on different aspects of the work of the Committee (*e.g.,* standards, assessments, accountability system). These subcommittees then reported on their work to the full Committee. During both subcommittee and formal Committee meetings, Committee members heard from experts and developed an understanding of the more technical aspects of standards, assessments, and accountability requirements outlined in ESEA section 1111 (section 1111). The Committee submitted a *Standards, Assessment, and Accountability System Negotiated Rulemaking Committee Final Consensus Report,* dated April 1, 2019, to the BIE Director providing the recommendations of the Committee. While the Committee did not come to consensus on language regarding assessments, they did identify specific provisions from the regulations of the Department of Education that they considered important to consider including in the rule, and there was general agreement on including language from 34 CFR 200.6(g), (j)–(k). The BIE included some of the provisions identified for consideration by the Committee in its final rule, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools. The BIE has also incorporated language similar to 34 CFR 200.6(g), (j)–(k), also taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools. With this diligent work, the Committee met the purpose for which it was established.

Comment: During the work of the Committee, there had been some discussion that the BIE would need to implement a rule in the 2019–2020 school year. This caused confusion and concern with an unrealistic timeframe to communicate with all BIE-funded schools and Tribes to implement a unified system.

Response: After the final Committee meeting, it became clear that it would not be feasible to implement requirements established pursuant to this final rule for the 2019–2020 school year. The Bureau, in consultation with the Department of Education, determined that consistent with ESEA section 1111(k), schools would continue to follow existing State requirements from the 2019–2020 school year and that the BIE should implement requirements effective for the 2020–2021 school year. In school year 2020–2021, the BIE will implement a transitional accountability system using the status quo assessments (*i.e.,* 23-state's assessments) to determine academic achievement and progress, progress in English Language Proficiency, graduation rates, and decide on a school quality student success indicator. In fall of 2020, the BIE will transition its English Language standards and assessments and begin providing professional development and support to schools. In September 2020, the BIE will issue school accountability determinations letters to all BIE-funded schools. A three-year timeline for implementation of the BIE's Standards, Assessments, and Accountability System will be available after the final rule is published and tribal consultation and analysis of comments on the Agency Plan has been completed.

Comment: There was overall support for the Committee's recommendation to undergo additional negotiated rulemaking processes to address the full range of issues addressed by the No Child Left Behind Act (NCLB) Negotiated Rulemaking Committee in 2003. These issues included: 25 CFR part 36, Minimum Graduation Requirements; 25 CFR part 37, Geographic Boundaries; 25 CFR part 39, The Indian School Equalization Program; 25 CFR part 39, Eligibility for Special Education Funding; 25 CFR part 42, Student Rights; 25 CFR part 44, Grants under the Tribally Controlled School Act; and 25 CFR part 47, Uniform Direct Funding and Support for Bureau Operated Schools.

Response: NCLB included amendments to the *Education Amendments of 1978,* Public Law 95–561, Title XI. These amendments required the Secretary to engage in negotiated rulemaking on various subjects, including recommendations on the definition of Adequate Yearly Progress (AYP) and a formula for the equitable distribution of funds for school replacement and new construction, prior to publishing any proposed regulations authorized under the *Education Amendments of 1978,* Public Law 95–561, as amended, or the *Tribally-Controlled Schools Act of 1988,* Public Law 100–297, as amended. The ESEA as amended by ESSA did not include similar amendments. Instead, ESEA as amended directed the Secretary to undergo a rulemaking process to develop regulations to govern requirements for standards, assessments, and an accountability system at BIE-funded schools. As such, the Committee was tasked with developing a recommendation on such a rule. However, the BIE recognizes the

need to review the regulations identified by the Committee to determine what further rulemaking may be necessary and will undergo additional rulemaking procedures and tribal consultation as appropriate.

Comment: Numerous commenters stated their concern with the Memorandum of Agreement (MOA) between the Department of Education and the Department. In particular, tribal representatives felt that the Departments should engage in a tribal consultation process prior to the two agencies making an agreement.

Response: Interior and the Department of Education will jointly engage in tribal consultation on a new MOA under ESEA section 8204(a).

Comment: During in-person tribal consultations, several commenters expressed concern about the lack of certified teachers available for rural schools, as well as teachers for certain content areas, where competing salaries offered by the local public schools may impact the ability of BIE-funded schools to recruit and retain science, mathematics, and Native American language teachers, as well as special education teachers.

Response: The BIE acknowledges and recognizes the need for effective and certified teachers. Title II, Part A funds may be used to support reform efforts with entities that oversee educator preparation, standards, certification, licensure, and tenure.

Comment: Numerous commenters expressed support of the continued use of the Northwest Education Association (NWEA) assessment instruments as they reflect years of data on American Indian students. The NWEA assessment instruments provide for an interim assessment that provides teachers and schools data points to measure growth three times a year.

Response: The BIE contracted with NWEA as an interim assessment for all BIE-funded schools for over 10 years and recognizes the value of the data generated using such assessments. The BIE's contract with NWEA ended September 2019, and the BIE will follow the required government procurement processes that emphasize competition in acquisitions to acquire assessment instruments. This rule does not prohibit a BIE-funded school from conducting an interim assessment outside of the Agency Plan.

Comment: Several commenters inquired about how the BIE's requirements for standards, assessments, and an accountability system would be funded to ensure fiscal allocations would be available to operate at the school level to implement a Bureau-wide unified system.

Response: As a Federal agency, the amount of funding available to the BIE is subject to the availability of appropriations as provided by Congress through the annual appropriations process. The BIE receives funding from several strands of Federal funding, including funds appropriated by Congress to the Department of Education under Title I of ESEA.

Comment: Quite a few commenters voiced serious concerns around the effects of trauma, and the epidemic of substance abuse and suicide, which seriously impact the teaching and learning environment of students in their respective communities.

Response: The BIE recognizes and shares such concerns that are felt across Indian Country, and has made addressing such matters a priority within the Bureau's Strategic Direction, which emphasizes a need to define ways to support student health, wellness, and safety. The BIE is developing programs and supports for student behavioral health and providing needed technical assistance to schools so that they can implement comprehensive behavioral health plans, programs, and interventions that foster an encouraging and supportive learning environment.

Comments Directly Related to the Proposed Rule

Comment: Several commenters expressed concern that the BIE intended to restrict the use of Native American languages in the proposed rule.

Response: It was not the intention of the BIE to convey such a message or raise such concerns. The BIE honors the unique and important status of Native American languages and is committed to the preservation, protection, and promotion of the right and freedom of Native Americans to use, practice, and maintain Native American languages. The BIE is committed to encouraging and supporting the use of Native American languages as a medium and mode of instruction, and to provide for comprehensive multicultural and multilingual educational program, including the production and use of instructional materials, culturally appropriate methodologies, and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories. The right to use Native American languages as a medium of instruction is enshrined in several authorities outside of this part, including the *Native American Languages Act of 1990,* 25 U.S.C. 2901 *et seq.,* and 25 CFR part 32, which has the status of codified law through 25 U.S.C. 2003 and requires a comprehensive multicultural and multilingual education program.

In order to address concerns, the BIE has added language to § 30.100 specifically referencing rights under statutes such as the *Native American Languages Act of 1990.* This addition also responds to commenters who wanted to see the language of the existing § 30.102 retained specifying, among other things, that nothing in this part is intended to effect, modify, or diminish the sovereign rights of Indian Tribes. BIE has also added language in new 30.105(h) similar to the language of 34 CFR 200.6 (j)–(k) regarding Native American language assessments at Native American immersion schools. As described below regarding comments on peer review, the BIE has also added language in a new 30.105(h) indicating that, where Native American languages are used for academic assessments, those assessments are valid and reliable for the purposes for which they are intended. The BIE intends to promulgate guidance in cooperation with the Department of Education, Tribes, and other stakeholders on the use of content assessments in a Native American language for Title I compliance purposes. The BIE has also modified the language in § 30.101 defining the term ''English learners'' to clarify that the definition of ''English learner'' is not intended to restrict the use of Native American languages as a medium of instruction. Finally, the BIE acknowledges that Native American language content assessments may be used independent of the waiver and alternative proposal process. In addition, although we intend to issue further guidance on the use of content assessments in Native American languages for Title I purposes, nothing in these regulations prevents the use of assessments of proficiency in a Native American language for schools that teach a Native American language.

Comment: Some commenters recommended including specific provisions in the final rule governing the use of Native American languages as a medium of instruction.

Response: The changes described above provide more clarity on the use of Native American language content assessments. The BIE does not want to unintentionally restrict the use of Native American languages. The use of Native American languages as a medium of instruction is a complicated and important topic, and BIE wants to ensure that the topic is addressed carefully, thoughtfully, and in

coordination with the Department of Education (on Native American language content assessments), Tribes, and other stakeholders. For instance, while formal peer review of Native American language content assessments might be difficult, there are ways to demonstrate that the assessments are valid and reliable for the purposes for which they are intended, and that will ensure a high-quality education for students in schools or programs using a Native American language as a medium of instruction. While the BIE intends to promulgate guidance outside of this rule, the BIE has incorporated language into the final rule specifically recognizing the right to use Native American languages as a medium of instruction and has included language in § 30.105(e) specifying the development of guidance regarding assessments.

Comment: A few commenters expressed an interest in incorporating 34 CFR 200.6(j) and (k) into 25 CFR part 30 regulations.

Response: The BIE has added language similar to 34 CFR 200.6(g), (j), and (k) but modified to meet the unique circumstances and needs of BIE-funded schools as opposed to States, and to recognize the sovereign rights to use Native American language as a medium of instruction. Further, instead of referencing ''peer review,'' the language added by the BIE refers to ''technical validity and reliability'' to support the uniqueness of Native American language assessments, as well as to ensure those assessments are proper for the uses in which they are administered.

Comment: Several commenters offered suggestions with regard to Native American languages. For example, some commenters argued that a provision in Title III, section 3127, of the Act regarding students in schools in Puerto Rico and in Native American language programs provides a special exemption from Title I assessment requirements.

Response: The BIE appreciates the detailed analysis accompanying such comments. However, the provisions of section 3127 only apply to entities that receive Title III funds. Title III formula grants are provided to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. *See* ESEA sections 3111 and 8104(48). In addition, BIE-funded schools are individually eligible for Title III discretionary grant funding. ESEA section 3112 provides that the following are eligible entities for the Title III Native American or ''NAM'' program: Indian Tribes; Tribally sanctioned educational authorities; Native Hawaiian and Native American Pacific Islander native language educational organizations; BIE-operated or funded schools; schools operated under a grant or contract in consortium with another such school or tribal or community organization; and BIE-operated schools and institutions of higher education in consortium with grant or contract schools. However, the BIE does not receive Title III funding and there is no set-aside or other provision in Title III applicable to the BIE itself. Thus, arguments linking BIE to Title III are not persuasive. Therefore the BIE has made no changes to the final rule in response to such comments.

Comment: A few commenters expressed concern with the definition of ''Native American language'' included in the proposed rule and either recommended alternatives or suggested defining the term in relation to the Native American Languages Act of 1990.

Response: The BIE has modified the definition of ''Native American language'' in the final rule to include a citation to the Native American Languages Act of 1990.

Comment: Several commenters asked about references in the proposed rule to ''peer review,'' in particular as to its use in the proposed § 30.105(e), which would have provided that ''all required BIE assessments'' undergo peer review to ensure that the assessments meet all applicable requirements.

Response: The BIE has added a definition of ''peer review'' that clarifies that the term ''peer review,'' as used in the proposed rule, refers to a process through which an entity demonstrates the technical soundness of an assessment system, including its validity and reliability for the purposes for which the assessments are intended. The BIE has further revised § 30.105(e) to clarify that the peer review requirement, as defined in the proposed rule, does not apply to Native American language assessments. As noted above, and as provided in the revised § 30.105(e), the BIE will promulgate guidance on the use of Native American language assessments in consultation with the Department of Education, Tribes, and other stakeholders to ensure that such assessments are technically valid and reliable for the purposes for which they are intended.

Comment: There was considerable support for the Committee's recommendation, as reflected in the proposed rule, for the BIE to develop a Standards, Assessments, and Accountability Plan (SAAP) in accordance with ESEA section 1111 and for including this expectation of the BIE in the final rule as proposed in § 30.103(b).

Response: The BIE recognizes this support and will keep the plan in the final rule as proposed in § 30.103(b). The BIE is changing the name of the plan in the final rule from ''Standards, Assessments, and Accountability System Plan (SAAP)'' to ''Agency Plan (AP).'' The name change is a non-substantive change intended to clarify the plan is by a Federal agency and parallels the State Plans of States. Plans developed by State Departments of Education describe how such departments will meet Federal education requirements pursuant to ESEA. The Agency Plan is intended to be a living document that will not only encompass the Bureau's standards, assessments, and accountability system, but will also cover a broader range of topics including the Bureau's guidance on Native Languages, waivers, and school support and improvement.

Comment: Numerous comments questioned the use of the term ''alternative proposal'' as applied to the waiver and alternative requirements process in subpart B of the proposed rule, §§ 30.112 to 30.119. Others asked for clarity as to who has the authority to waive the Secretary's requirements and propose alternative requirements.

Response: In response to these comments, the BIE added language to the definition of ''alternative proposal'' and revised it to ''Proposal for alternative requirements'' to provide clarity of the authority of school boards relative to the government-to-government relationship between Tribes and the BIE. The BIE has also split the definitions of ''tribal governing body or school board,'' and added to the definition of ''*waiver*'' to provide further clarity. These definitions incorporate definitions from the BIE's underlying statutory authorities. These definitions further provide that in the case of a conflict between a tribal governing body's proposal for alternative requirements and a school board's proposal for alternative requirements, consistent with the government-to-government relationship and the right to the exercise of sovereignty in education, a tribal governing body's proposal has precedence.

Comment: A few commenters requested clarification on the use of the term ''English learner'' since the proposed rule included an entire section on English learners, and others sought clarity on the effect that this definition would have on Native American language learners.

Response: In response to such comments, the BIE has added the

definition of ''*English learner*'' from section 8101(20) of the ESEA. The addition should clarify the differences between an English language learner and Native American language learner. The definition of ''*English learner*'' also now includes a note explaining that the definition is not intended to affect the right to use Native American language as a medium of instruction. However, as required by Federal law and as provided in § 30.105(h)(2), English learners must still receive English language services. This requirement would not apply to other students at schools that use a Native American language as the medium of instruction who are not English learners.

Comment: There was overwhelming support for an extended-year cohort graduation rate as allowing schools to assist students in completing their coursework when there is a need for additional years beyond a 4-year cohort and preventing school graduation rates from being negatively impacted.

Response: The BIE added a definition of ''extended-year cohort graduation rate'' in § 30.111 that recognizes that there are high schools that prefer a 5-year cohort. The use of the extended-year cohort graduation rate will be addressed further in the BIE Agency Plan on which the BIE will consult with Tribes and stakeholders prior to finalizing.

Comment: Multiple commenters expressed concern with how technical assistance will be provided by the Bureau and indicated that technical assistance should not only be explicit in the waiver subpart, but the Bureau should also provide clarity throughout the proposed rule.

Response: The Bureau added a definition of ''technical assistance'' in the final rule to provide clarity on the types of technical assistance available relative to support and improvement activities, waivers, and the development of alternative proposals.

Comment: Several commenters expressed concern that technical assistance was not mentioned in other sections of the proposed rule other than subpart B.

Response: The BIE has added language in the final rule to provide technical assistance as requested in writing in §§ 30.108(a)(3)(i), 30.109(c)(3), and 30.110(h).

Comment: Commenters were overwhelmingly supportive of the Committee's recommendation for the inclusion of stakeholder consultation, as reflected in proposed §§ 30.103(c) and 30.111(b) introductory text and (b)(7), because consultation is essential to fulfilling the purpose of these rules to define the standards, assessments, and an accountability system.

Response: The BIE agrees with the Committee that meaningful engagement with stakeholders is critical to the success of the BIE's education mission. The BIE has added a definition of ''tribal consultation'' that incorporates tribal consultation as described in the Department's Tribal Consultation Policy. The BIE has further added language at the end of § 30.103(a) to incorporate language recommended by the Committee that was previously located at § 30.111(b) introductory text and (b)(7) of the proposed rule, indicating the Secretary must periodically review and revise the requirements for the accountability system in consultation with Tribes and other stakeholders, to combine a virtually identical concept in proposed § 30.103(a) regarding the periodic review and revision of requirements. This change avoids the possibility that different kinds of processes might apply to different requirements established pursuant to this part.

Comment: There were many comments regarding the Committee's recommendation, as reflected in the proposed rule, to include tribal civics as a topic for instruction and to be phased in for children from grades K–12. Numerous commenters were in support of inclusion of the concept of tribal civics in the final rule. Some tribal representatives stated that it should be up to the individual Tribes to teach tribal civics given each Tribe's unique history and relationship with the United States.

Response: The BIE is retaining tribal civics in the final rule. In accordance with the Committee's recommendation, requirements for tribal civics will be phased in to the BIE's requirements for standards, assessments, and an accountability system. Details of how the BIE will address the implementation of tribal civics will be addressed in the Agency Plan and will be included as a topic in tribal consultation on such Agency Plan. The BIE understands and is cognizant of the concerns raised by some tribal representatives. The BIE anticipates developing requirements for tribal civics in a way that would focus on the relationship between the United States and Tribes broadly, and that would not supplant a Tribe's role in teaching its own unique history.

Comment: Some commenters requested clarity on the 1% cap on the use of alternate assessments for students with the most significant cognitive disabilities, in the proposed rule in § 30.108.

Response: The BIE added language to § 30.108(a)(2)(ii) in the final rule to clarify that the 1% cap applies to all BIE-funded schools, and that information from the individualized education program (IEP) team submitted through the BIE's student information system will be used to justify exceeding the 1% cap.

Comment: Several commenters expressed support for including both science and tribal civics in the BIE accountability system.

Response: This final rule provides that both science and tribal civics will be phased into the BIE accountability system, starting as a School Quality or Student Success (SQSS) indicator, and that their inclusion as an SQSS indicator will be revisited as the new accountability system is implemented with the possibility that the method of their inclusion in the accountability system may change in the future.

Comment: Several commenters requested clarity regarding comprehensive school support and improvement activities and targeted support and improvement activities as this was not clear in the proposed rule.

Response: As described above, the BIE has added language to § 30.111 of the final rule to provide clarity and to reflect language within section 1111(c)–(d) of ESEA in regard to school support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools. Changes were similarly applied to final subpart C, §§ 30.120 through 30.124.

Comment: Numerous comments expressed support of the inclusion of § 30.112(g) (now § 30.113) as recommended by the Committee, allowing a tribal governing body or school board to remain with the State standards and assessments outside of the process for waiver and approval of alternative requirements. At least one commenter opined that the proposed option would not work to fix accountability issues at BIE-funded schools.

Response: This language was recommended by the Committee in response to a specific concern expressed by a Committee member regarding a specific school that might lose academic funding provided by a State if it did not use the State's requirements. The language was also recommended by the Committee at a time when there was an expectation that the BIE would be required to implement its standards, assessments, and accountability system during the 2019–2020 school year, which caused concerns for effective implementation of such requirements

on such a short timeline. The cause of such concerns has since been removed. The BIE has removed the language recommended by the Committee. The BIE supports tribal sovereignty in education and is mindful of those commenters who felt that to remove this language and require tribal governing bodies or school boards to follow the process for waivers and alternative proposals would be onerous. However, the BIE believes that if a tribal governing body or school board proposes to use requirements that have already been approved by the Secretary of Education, such as a State's requirements, the approval process should be as close to automatic as possible, provided that the State agrees to the use of their requirements. The BIE further anticipates that if a tribal governing body or school board works with entities capable of providing technical assistance prior to submitting a proposal for alternative requirements that such alternative requirements should likewise experience expedited processing.

The BIE further notes that the process described in the Committee's recommendation for § 30.112(g) and the process for waivers and alternative proposals in subpart B of the proposed rule, §§ 30.112 to 30.119 and in ESEA section 8204(c), only differ in requiring a tribal governing body or school board to also notify the Secretary of Education. The BIE notes that this change in the final rule conforms to the understanding underlying the Committee's recommendation that BIE-funded schools would generally follow the BIE's requirements as part of a system of unified requirements. Finally, the proposed language ignores the statutory role of the Secretary of Education in the process of approving requirements alternative to those implemented pursuant to this final rule.

Comment: Some commenters requested more certainty in the waiver and alternative proposal process, such as specific timelines and milestones endorsed by some Committee members.

Response: The Committee ultimately recommended that the BIE and the Department of Education work together to develop a timeline for review of alternative proposals. The final rule includes the statutory requirement that alternative proposals be submitted within 60 days of a tribal governing body or school board's decision to waive the requirements developed and implemented by the BIE. The regulations provide flexibility, including that a tribal governing body or school board may request an indefinite extension of this time. Additionally, the final rule advises a tribal governing body or school board to seek technical assistance prior to waiving the requirements developed and implemented by the BIE in order to maximize the time available to develop alternative proposals. Until such alternative proposals have been approved, a tribal governing body or school board must continue to follow the Secretary's requirements. The final rule explains that the BIE will provide a status update within 120 days of receipt of an alternative proposal, and every 30 days thereafter. Since ESEA, as amended, does not provide the Secretary with the authority to regulate the conduct of the Secretary of Education regarding waivers and approval of alternative proposals, these provisions in the final rule are only binding on the BIE. However, in practice, the BIE and the Department of Education work closely on such matters.

Comment: Two commenters suggested a mechanism for the automatic approval of alternative proposals if the Secretary and the Secretary of Education do not timely respond to alternative proposals.

Response: Section 8204(c) of the Act does not provide for automatic approval, and ESEA, as amended, does not provide the Secretary of the Interior with the authority to regulate the Secretary of Education regarding the approval of alternative proposals. As such, while the Part 30 regulations could provide for the automatic approval of the Secretary of the Interior, these regulations could not provide for automatic approval by the Secretary of Education. In any case, while the BIE respects tribal sovereignty in education, the BIE also has a statutory obligation to ensure that the programs of the BIE-funded school system are of the highest quality and provide for the basic elementary and secondary academic services to students served at BIE-funded schools, including meeting the unique educational and cultural needs of such students. Consistent with such obligations, the BIE believes that caution needs to be exercised when determining the requirements that are used at BIE-funded schools. While the BIE is concerned that procedures for the automatic approval of alternative proposals may not be in the best interest of students served by BIE-funded schools, the BIE is committed to providing expeditious reviews of submitted and compliant waivers and alternative proposals.

Comment: Several commenters sought clarity on what could be waived and what alternative proposals might look like.

Response: Section 8204(c)(2) of the Act provides that the requirements developed and implemented may be waived by a tribal governing body or school board in part or in whole. The BIE believes that this language, combined with flexibility implied by the words ''taking into account the unique circumstances and needs of such schools and the students served'' could encompass a wide variety of possibilities, including potentially innovative proposals as well as those responsive to unique cultural and linguistic needs. As such, it would be difficult and potentially restrictive of such innovative approaches to attempt to quantify such possibilities in the part 30 regulations. However, the final rule explains that BIE will collaborate with the Department of Education to develop templates consistent with the requirements of the Act, as amended, to guide tribal governing bodies or school boards. This is consistent with prior practice, as is the promulgation of guidance.

Comment: One commenter suggested that the waiver and alternative proposal process described in the proposed rule was onerous and burdensome.

Response: Section 8204(c) of the Act provides the basic contours of the procedures for waiver and approval of proposals for requirements alternative to those developed and implemented by the BIE. Section 8204(c) provides that a tribal governing body or school board may waive, in part or in whole, the requirements established by the Secretary, where the requirements are determined by a tribal governing body or school board to be inappropriate. If such requirements are waived, Section 8204(c)(2) requires the tribal governing body or school board to submit to the Secretary within 60 days a proposal for alternative standards, assessments, and accountability system, if applicable, consistent with section 1111, that takes into account the unique circumstances and needs of such school or schools and the students served. Such alternative requirements will be approved by the Secretary and the Secretary of Education unless the Secretary of Education determines that the proposed alternative requirements do not meet the requirements of section 1111, taking into account the unique circumstances and needs of such school or schools and the students served. As this process is described in statute, the BIE is unable to change the procedures in the final rule. While the BIE will not create a mechanism for the automatic approval of alternative proposals as other commenters had requested, the BIE is committed to providing expeditious

reviews of submitted and compliant waivers and alternative proposals.

Comment: Some commenters suggested that alternative requirements (also known as waivers) developed and approved under ESEA as amended by the No Child Left Behind Act of 2001 should not have to transition to the requirements developed by the BIE pursuant to the Part 30 regulations developed in response to ESEA as amended by the ESSA.

Response: The BIE is working with the Department of Education on an orderly transition for the two Tribes with approved alternative requirements. Such alternative requirements will need to meet the requirements of section 1111 of the Act, as amended.

IV. Section-by-Section Analysis

This portion of the preamble previews the final rule and highlights certain aspects of the rule that may benefit from additional explanation.

This final rule amends part 30 as a whole. The title of part 30 will change from ''Adequate Yearly Progress'' to ''Standards, Assessments, and Accountability System.'' This final rule describes rules for establishing requirements for a unified standards, assessments, and an accountability system for BIE-funded schools consistent with section 1111 on a national basis, taking into account the unique circumstances and needs of such schools and the students served by such schools. This final rule also describes rules for waiver of such requirements in part or in whole and approval of alternative proposals for requirements; and further provides rules for school comprehensive support and improvement activities. This final rule also recognizes the unique status and importance of Native American languages and the sovereign right of Tribes to use such languages as a medium of instruction.

What is the purpose of this part? (§ 30.100)

This section has been modified from the proposed rule. As recommended by some commenters, the section adapts language from the old 25 CFR 30.102 and provides that nothing in part 30 shall be construed to affect, modify, or diminish the sovereign rights of Tribes, statutory rights under law, the Secretary of the Interior's trust responsibility for Indian education, nor the trust responsibility of the United States to Indian Tribes or individual Indians. In response to other commenters concerned that a lack of language concerning the use of Native American languages as a medium of instruction, this section also specifically enumerates the Native American Languages Act of 1990 and the right to use Native American languages as a medium of instruction. Since this section recognizes the right to use Native American languages as a medium of instruction, language recommended by the Committee for § 30.103(e) concerning Native American language assessments has been removed. The BIE has added language to § 30.105(h) concerning the use of assessments in Native American languages for Title I compliance purposes and has attempted to distinguish such assessments in the final rule from others such as assessments of proficiency in a Native American language or for other purposes. The BIE has also incorporated language from 25 CFR 32.4(h) concerning the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes, and Alaska Native entities may utilize at their discretion.

What definitions apply to terms in this part? (§ 30.101)

As indicated in Section II and III above, the BIE modified and added definitions in response to commenters to clarify terms used in the rule. In response to comments, the BIE has added definitions for ''agency,'' ''agency plan,'' and ''English learner.'' The definition of ''peer review'' has been modified to explain that peer review means a process through which the technical soundness of an assessment, including its validity and reliability is demonstrated. The BIE has added language to § 30.105(e)(2) explaining that it will develop non-regulatory guidance, in collaboration with the Department of Education, on the use of Native American language content assessments in consultation with Tribes and other stakeholders. The definition of ''Native American language'' has been modified to include a reference to the definition of the same in 25 U.S.C. 2021(20).

In response to comments and for clarity within the rule, BIE has added a definition of ''technical assistance'' and describes two types of technical assistance: Technical assistance with regard to comprehensive support and improvement and technical assistance with regard to proposals for alternate assessments. In response to requests for clarity on the authority to exercise the right to waive the BIE's requirements and submit proposals for requirements alternative to such requirements, the BIE has split the definition of ''tribal governing body or school board'' into two separate definitions for ''tribal governing body'' and ''school board.'' The BIE has modified the definitions of ''alternative proposal'' and ''waiver'' for similar reasons. The BIE has also added a definition of ''academic school year'' to establish a timeframe for acquiring alternate assessments, if applicable. The BIE has further modified the definition of ''Tribally controlled school'' to incorporate language from 25 U.S.C. 2511(9). The BIE has added a definition of ''tribal consultation'' to add clarification to how the BIE meaningfully and timely consults with Tribes and other stakeholders.

Standards, Assessments, and Accountability System Requirements (Subpart A)

This subpart in the rule outlines how the Secretary will develop or implement requirements for standards, assessments, and an accountability system at BIE-funded schools.

What does the Act require of the Secretary? (§ 30.102)

This section contains non-substantive changes from the proposed rule for clarity through the inclusion of the words ''by such schools'' at the end of paragraph (b) and the words ''that seeks a waiver described in paragraph (b).''

How will the Secretary implement standards, assessments, and accountability system requirements? (§ 30.103)

This section includes language to support the periodic review and revision of the Secretary's requirements. The BIE has removed language recommended by the Committee for this section at § 30.111(b) regarding the periodic review and revision of the accountability system in use at BIE-funded schools since this language is redundant in light of § 30.103(a)–(b). For consistency with the text of similar language in section 1111(a)(6)(A)(ii) providing that State plans shall ''be periodically reviewed and revised as necessary . . . to reflect changes in the State's strategies and programs,'' the BIE has incorporated some of the language of § 30.111(b)(7) into § 30.103(a).

The BIE replaced a reference to a ''Standards, Assessments and Accountability Plan (SAAP)'' with a reference to an ''Agency Plan'' to clarify the plan is by a Federal agency and parallels the State Plans of States. The Agency Plan term also reflects that the plan is intended to be a living document that will encompass the Bureau's

standards, assessments, and accountability system, but will also cover topics including the Bureau's guidance on Native Languages and waivers. The BIE deleted some language recommended by the Committee describing ongoing consultation with clear description of meaningful consultation with American Indian Tribes and Alaska Native villages, schools, parents, and other stakeholders for consistency with the Department's existing tribal consultation policy regarding tribal consultation. Since § 30.100 recognizes the right to use Native American languages as a medium of instruction, and has added § 30.105(h) regarding the use of Native American language assessments for Title I compliance purposes, language recommended by the Committee for a paragraph (e) has been removed.

How will the Secretary implement requirements for standards? (§ 30.104)

This section retains the proposed provision reflecting the Committee's recommendation to include a requirement for academic standards in tribal civics. The BIE has modified the language of paragraphs (a) and (b) of this section for clarity and consistency with section 1111 of the Act. Paragraph (c) of this section has been modified to add the word ''content'' in front of the word ''standards'' in the first instance in which it is used. The BIE has also specified a requirement in paragraph (f) for English language proficiency standards. The BIE has also made other non-substantive changes to this section.

How will the Secretary implement requirements for academic content assessments? (§ 30.105)

The section includes certain non-substantive changes. Consistent with the concept of phasing tribal civics into BIE's requirements, § 30.105(a) has been modified to provide that tribal civics assessments will be developed as funding becomes available. The BIE has incorporated into paragraph (b)(9)(i)(C) of this section a suggestion from the comments on the proposed rule to include a reference to the definition of ''children with disabilities'' as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*). In paragraph (c) the BIE has added references to ''end of course'' assessments. Paragraph (e) has been modified in response to comments regarding the use of Native American languages to acknowledge the difficulty of peer review of Native American language assessments. The language now clarifies that the peer review requirement does not apply to tribal civics and non-content Native American language assessments. However, consistent with the new definition of ''Peer review,'' Native American language assessments in ''content'' areas intended for Title I compliance purposes must be technically valid and reliable for the purposes for which they are intended.

In response to both comments expressing concern that the proposed rule restricted the use of Native American language assessments and comments supporting the inclusion of a provision like that in the Department of Education's regulations at 34 CFR 200.6, paragraphs (j) and (k), the BIE has added a new paragraph (h). The language is similar to that in the regulations of the Department of Education but modified to reflect the difficulty of peer review of Native American language assessments, and to change requirements for peer review to a requirement that such assessments be technically valid and reliable for the purposes for which they are intended.

How will the Secretary provide for the inclusion of all students in assessments? (§ 30.106)

This section contains no changes from the proposed rule.

How will the Secretary include students with disabilities in assessments? (§ 30.107)

This section contains no changes from the proposed rule.

How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities? (§ 30.108)

The BIE has included some non-substantive changes to this section and has fixed an error in word choice identified by commenters. In response to comments, the BIE has clarified that the one (1) percent cap referred to in paragraph (a)(1) of this section refers to one (1) percent of the total number of ''all'' students in ''all'' BIE-funded schools for each subject who take an alternate assessment aligned with alternate academic achievement standards. In response to comments, the BIE has added language to paragraph (a)(2)(ii) to explain that information explaining the alternate assessments to be used consistent with a student's individualized education plan (IEP) will be uploaded to the BIE's student information system. This information will be used to justify exceeding the 1% cap. In response to comments, BIE has also added language to paragraph (a)(3)(i) specifying that BIE will provide technical assistance upon written request with regard to individualized education program (IEP) teams.

How will the Secretary include English learners in academic content assessments? (§ 30.109)

The BIE has made some non-substantive changes to this section. In response to comments, the BIE has added language to paragraph (c) of this section specifying that the BIE will provide technical assistance upon written request to BIE-funded schools and parents in regard to English language learners.

How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners? (§ 30.110)

The BIE has added language to paragraph (a) of this section to clarify that annual assessments in English proficiency must be valid and reliable. In response to comments, the BIE has also added a new paragraph (h) specifying that the BIE will provide technical assistance, including training teachers on how to administer assessments, upon written request to support BIE-funded schools with the BIE's alternate English language proficiency assessments.

How will the Secretary implement requirements for an accountability system? (§ 30.111)

The BIE has removed language recommended by the Committee and incorporated into the proposed rule at § 30.111(b) language regarding consultation and the periodic review and revision of the accountability system in use at BIE-funded schools because that language was redundant to § 30.103(a)–(b). For consistency with the text of similar language in section 1111(a)(6)(A)(ii) providing that State plans shall ''be periodically reviewed and revised as necessary . . . to reflect changes in the State's strategies and programs,'' the BIE has incorporated some of the language of § 30.111(b)(7) into § 30.103(a).

The BIE supports the Committee's recommendation that science and tribal civics be incorporated into the requirements for an accountability system. To this end, the BIE has consolidated subsections (c) and (d) of this section as it existed in the proposed rule and has provided that both science and tribal civics requirements will be phased into the accountability system as School Quality or Student Success (SQSS) indicators. This new paragraph further provides, consistent with the language recommended by the

Committee concerning tribal civics, that the use of both science and tribal civics in the accountability system will be revisited as the accountability system is implemented. The BIE has added language throughout this section in response to comments seeking clarity on school comprehensive and targeted support and improvement activities consistent with section 1111(c)–(d) regarding support and improvement activities. In response to comments, the BIE has also added language to § 30.111(h)(2) specifying that the BIE will provide technical assistance to schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support upon request in writing.

BIE also added an explanation of the term ''extended-year cohort graduation rate'' to this section to recognize that it may be appropriate to consider for purposes of accountability, in addition to schools' four-year adjusted cohort graduation rate, one or more extended-year rates (*i.e.,* a 5-year adjusted cohort graduation rate). The use of the extended-year cohort graduation rate will be addressed further in the BIE Agency Plan on which the BIE will consult with Tribes and stakeholders prior to finalizing.

Accountability, Waiver of Requirements, Technical Assistance, and Approval of Alternative Requirements (Subpart B)

May a tribal governing body or school board waive the Secretary's requirements for the standards, assessments, and accountability system? (§ 30.112)

In response to comments regarding when alternative requirements will be effective, the BIE has added language to this section clarifying that alternative requirements will generally be effective in the school year following the school year in which such alternative requirements have been approved. The final rule specifies a general effective date in ''the school year following the school year'' to provide time for proper implementation. The final rule uses the word ''generally'' to reflect the fact that in some circumstances it may not be feasible to implement alternative requirements in the next school year, such as due to a lack of appropriated funds. The use of the word ''generally'' is also intended to signify that there may be some circumstances in which alternative requirements could be implemented during the school year in which they have been approved, and also recognizes that in some circumstances plans for alternative requirements might themselves contemplate a gradual phasing in of such requirements.

How does a tribal governing body or school board waive the Secretary's requirements? (§ 30.113)

The BIE has made some non-substantive changes to this section. In order to address concerns over accountability regarding the BIE's responsiveness to notices of waivers, the BIE has added language to paragraph (b) to specify that technical assistance must be requested in writing. The BIE has similarly specified in paragraph (d) that a request for extension of the statutory 60-day deadline for submission of a proposal for alternative requirements should be in writing. Such specification in both subsections (b) and (d) should help to create a paper trail for accountability purposes. Such specification further should be broad enough to accommodate tribal laws concerning official tribal government action.

What should a tribal governing body or school board include in a proposal for alternative requirements? (§ 30.114)

This section contains no changes from the proposed rule.

May proposed alternative requirements use parts of the Secretary's requirements? (§ 30.115)

This section contains no changes from the proposed rule.

Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements? (§ 30.116)

This section has been modified from the proposed rule to specify that requests for technical assistance regarding the development of alternative proposals should be submitted in writing to the Director.

What is the process for requesting technical assistance? (§ 30.117)

This section has been modified from the proposed rule to provide that requests for technical assistance regarding the development of alternative proposals should be sent to the Department of Education as well as the BIE. This change acknowledges the statutory requirement for both Departments to provide technical assistance in this capacity.

When should a tribal governing body or school board request technical assistance? (§ 30.118)

This section has been modified from the proposed rule to specify that a request for technical assistance regarding the development of alternative proposals should be in writing.

How does the Secretary review and approve alternative requirements? (§ 30.119)

This section contains no changes from the proposed rule.

Support and Improvement (Subpart C)

Both in response to comments seeking clarity on support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this subpart.

How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities? (§ 30.120)

This section has been modified from the proposed rule to reference support and improvement activities in the context of requirements for accountability system described in § 30.111(g).

How will the Secretary implement requirements for comprehensive support and improvement activities? (§ 30.121)

Both in response to comments seeking clarity on comprehensive support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

How will the Secretary implement requirements for targeted support and improvement activities? (§ 30.122)

Both in response to comments seeking clarity on support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

How will the Secretary implement requirements to identify schools for additional targeted support? (§ 30.123)

In response to comments, this section has been modified from the proposed rule to clarify that the lowest-performing 5% percent of schools referenced in the section refers to the lowest-performing 5% of schools identified for comprehensive support and improvement. Both in response to comments seeking clarity on support and improvement activities, and in light of a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section. The BIE has further added a reference back to a requirement for a system of annual meaningful differentiation in § 30.111(f).

How will the Secretary implement continued support for BIE-funded schools and school improvement? (§ 30.124)

Both in response to comments seeking clarity on comprehensive and targeted support and improvement activities, and in light of a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

Responsibilities and Accountability (Subpart D)

This rule describes ''Responsibilities and Accountability'' in regard to the BIE and this part.

What is required for the Bureau to meet its report responsibilities? (§ 30.125)

This section contains no changes from the proposed rule.

What information collections have been approved? (§ 30.126)

The BIE will receive the OMB Control Number for the new information collection regarding the waiver process.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BIE has developed this rule in a manner consistent with these requirements. In addition, section 8204 of the ESEA, as amended, directs the Secretary of the Interior, in consultation with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation of the Secretary of the Interior's obligation to establish requirements for the standards, assessments and an accountability system for BIE-funded schools. This rule is also part of the Department's commitment under the Executive order to reduce the number and burden of regulations.

B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more because it is the responsibility and goal for the Federal Government to provide comprehensive education programs and services for Indian Tribes and Alaska Natives.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal or local government agencies, or geographic regions because this rule affects only the children served at BIE-funded schools.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only the children served at BIE-funded schools.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

F. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule does not impose conditions or limitations on the use of any private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule does not substantially and directly affect the relationship between the Federal and State government. The Secretary of the Interior is responsible for managing BIE-funded schools and interacting with tribal governments or tribal organizations operating Tribally-controlled grant and contract schools. Because this rule does not alter that relationship, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be writing to minimize litigation.

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty.

Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it would have no tribal implications that would impose substantial direct compliance costs on Indian tribal governments.

Also, under this consultation policy and Executive order criteria with Indian Tribes and other individual stakeholders, BIE added language recommended by the Committee indicating the Secretary must

periodically review and revise the requirements established pursuant to this part and consult with Tribes and other stakeholders on necessary changes. In addition the BIE will hold further consultations regarding the BIE's Agency Plan, which will provide opportunities for stakeholders to be involved in shaping the implementation of the BIE's requirements for standards, assessments, and an accountability system. The BIE and the Department of Education will also hold consultations regarding the memorandum of agreement between the Departments required in ESEA section 8204(a).

J. Paperwork Reduction Act

This rule contains information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Department is seeking approval for a new OMB Control Number.

OMB Control Number: 1076–0191.

Title: Standards, Assessments, and Accountability System Waiver.

Brief Description of Collection: This information collection is necessary to implement the requirements of ESEA, as amended by ESSA. The ESEA requires all schools, including BIE-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic standards and aligned assessments. In order to accomplish these goals, the Secretary will develop or implement standards, assessments, and an accountability system requirements for BIE-funded schools. Tribal governing bodies and school boards are able to waive the Secretary's requirements, in part in or whole. However, such entities are required to submit a proposal for alternative requirements for approval by the Secretary and the Secretary of Education prior to implementation of such alternative requirements.

Type of Review: Existing collection in use without OMB control number.

Respondents: Indian Tribes and BIE-funded school boards.

Number of Respondents: Two on average (each year).

Number of Responses: Two on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: 500 hours.

Estimated Total Annual Hour Burden: 1,000 hours.

Estimated Total Non-Hour Cost: $0.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(f) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: (f)–(i). We have also determined that this rulemaking is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule would not be a significant energy action under the definition in Executive Order 13211, and therefore, would not require a Statement of Energy Effects.

List of Subjects in 25 CFR Part 30

Elementary and secondary education, Grant programs-Indians, Indians-education, Schools.

For the reasons set forth in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises 25 CFR part 30 to read as follows:

PART 30—STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM

Sec.

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30.121 How will the Secretary implement requirements for comprehensive support and improvement activities?
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Subpart D—Responsibilities and Accountability

30.125 What is required for the Bureau to meet its reporting responsibilities?
30.126 What information collections have been approved?

Authority: Pub. L. 114–94, 129 Stat. 1312, 20 U.S.C. 6311 *et. seq.;* 20 U.S.C. 7824(c).

§ 30.100 What is the purpose of this part?

(a) This part establishes regulations regarding standards, assessments, and an accountability system at BIE-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. The Act requires the Secretary to develop or implement requirements for standards, assessments, and an accountability system for BIE-funded schools.

(b) Nothing in this part may be construed to affect, modify, or diminish the sovereign rights of Indian Tribes; statutory rights under law, including the right to use Native American languages as a medium of instruction as described in the *Native American Languages Act,*

Public Law 101–477; the Secretary's trust responsibility for Indian education; nor the trust responsibility of the United States to Indian Tribes or individual Indians. In carrying out the education mission of the Department, the BIE has an obligation to provide for a comprehensive multicultural and multilingual education program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(c) In carrying out activities under this part, the Secretary will be guided by the policies stated in 25 CFR part 32.

§ 30.101 What definitions apply to terms in this part?

Act means the *Elementary and Secondary Education Act of 1965,* as amended by the *Every Student Succeeds Act,* Public Law 114–95, enacted December 10, 2015.

Agency Plan means a BIE document that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how standards, assessments, and an accountability system will be implemented at a BIE-funded school.

BIE-funded school(s) means a school funded by the Bureau of Indian Education and includes Bureau-operated schools and tribally controlled schools.

Bureau or *BIE* means the Bureau of Indian Education.

Bureau-operated school means a school operated by the Bureau of Indian Education.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

English learner means an individual:

(1) Who is aged three (3) through twenty-one (21);

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual;

(i) The ability to meet the challenging academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

(5) This definition is not intended to affect the right to use Native American language as a medium of instruction.

Foster care means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV–E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Native American language means the historical, traditional languages spoken by members of federally recognized Indian Tribes, as defined in 25 U.S.C. 2021(20).

Peer review means, for purposes of this part, the process through which an entity demonstrates the technical soundness of an assessment system, including its validity and reliability for the purposes for which the assessments are intended.

Proposal for alternative requirements means a proposal submitted by a tribal governing body or school board for requirements, in whole or in part, alternative to the ones adopted by the Secretary for standards, assessments, or an accountability system at BIE-funded schools except that an alternative proposal for a Bureau-operated school does not include any actions that would affect BIE's authority over inherently Federal functions as defined in 25 U.S.C. 2021(12).

Secretary means the Secretary of the Interior or a designated representative.

School board means, with respect to waiver and submission of alternative proposals for a BIE-funded school, either an ''agency school board' as defined in 25 U.S.C. 2021(1), or a ''local school board'' as defined in 25 U.S.C. 2021(14).

School year means the academic school year as described by a school in the BIE's student information system.

Subgroup of students means:

(1) Economically disadvantaged students;

(2) Students from major racial and ethnic groups;

(3) Children with disabilities; and

(4) English learners.

Technical assistance means with regard to:

(1) Comprehensive or targeted support and improvement or additional targeted support, subject to the availability of appropriations, assistance from the BIE to address issues impacting a school's or one or more subgroups within a school's ability to meet the BIE's academic goals and indicators developed or implemented in accordance with this part, including assistance to extend technical capabilities and training opportunities;

(2) Proposals for alternative requirements, technical assistance means, subject to the availability of appropriations, assistance from the BIE and the Department of Education in the development of alternative requirements for standards, assessments, and an accountability system in part or in whole, including assistance in understanding what options may be available to enhance the exercise of sovereignty in education and address the unique circumstances and needs of BIE-funded schools and the students served at such schools.

(3) English language proficiency assessments and alternate English language proficiency assessments, assistance including training teachers on how to administer such assessments.

Tribal consultation means consultation conducted in accordance with the tribal consultation policy of the Department of the Interior.

Tribal governing body means with respect to waiver and submission of alternative proposals for:

(1) Tribally controlled schools, the entity authorized under applicable tribal law to waive the Secretary's requirements and propose alternative requirements; and

(2) A BIE-operated school, the recognized governing body of the Indian Tribe involved that represents at least ninety (90) percent of the students served by such school.

Tribally controlled school means, for the purposes of this part, a school operated under a Public Law 93–638 contract or Public Law 100–297 grant that is:

(1) Operated by an Indian Tribe or a tribal organization, enrolling students in Kindergarten through grade twelve (12) of schools that may have varying structure, including a preschool;

(2) Not a local education agency as defined in 25 U.S.C. 2511(5); and

(3) Not directly administered by the Bureau of Indian Education.

Waiver means the exercise of authority by a tribal governing body or school board for a BIE-funded school to elect to implement requirements, in part or in whole, alternative to the ones adopted by the Secretary pursuant to this part at schools that are under the tribal governing body's or school board's jurisdiction following approval of the proposal for alternative requirements by the Secretary and the Secretary of Education pursuant to section 8204 of the Act, except that a tribal governing body's decision to exercise waiver authority under this part takes priority over a school board decision to exercise waiver authority under this part.

Subpart A—Standards, Assessments, and Accountability System Requirements

§ 30.102 What does the Act require of the Secretary?

(a) The Act requires the Secretary to define standards, assessments, and accountability system, consistent with section 1111 of the Act, for schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of the schools and the students served, using regulations developed through a negotiated rulemaking process.

(b) If a tribal governing body or school board determines that the requirements described in paragraph (a) of this section are inappropriate, it may waive these requirements, in part or in whole, and propose alternative requirements for standards, assessments, and an accountability system that meets the requirements of section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served by such schools.

(c) The Secretary and the Secretary of Education will provide technical assistance, upon request, either directly or through a contract, to a tribal governing body or school board that seeks a waiver and alternative requirements described in paragraph (b) of this section.

§ 30.103 How will the Secretary implement Standards, Assessments, and Accountability System requirements?

(a) The Secretary, through the Director, must describe requirements for standards, assessments, and an accountability system for use at BIE-funded schools in accordance with this part. The Director must periodically review and revise these requirements, as necessary, but review will occur not less often than every four (4) years beginning with the school year for which the requirements become effective.

(b) The Director will develop an Agency Plan that will provide Indian Tribes, schools, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE-funded schools, including the requirements that have been established for standards, assessments, and an accountability system for BIE-funded schools.

(c) The Secretary will engage in meaningful consultation with Indian Tribes and Alaska Native Villages, schools, parents, and other stakeholders, when developing and revising requirements for standards, assessments, and an accountability system for BIE-funded schools.

(d) The Secretary may voluntarily partner with States, or another Federal agency, in the development of challenging academic standards and assessments.

§ 30.104 How will the Secretary implement requirements for standards?

(a) The Secretary will implement requirements for academic standards for BIE-funded schools by adopting:

(1) Challenging academic content standards; and

(2) Aligned academic achievement standards consisting of at least three levels of achievement defined in the Agency Plan.

(b) Combined, both academic content standards and academic achievement standards are hereinafter collectively referred to as ''challenging academic standards.''

(c) The academic content standards will apply to all BIE-funded schools and the students served at those schools. Such academic content standards will include:

(1) Mathematics;

(2) Reading or Language Arts;

(3) Science;

(4) Tribal civics, as appropriations become available; and

(5) Any other subject determined by the Secretary.

(d) The academic content standards must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards.

(e) The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities that:

(1) Are aligned with the challenging academic content standards under paragraphs (a) and (b) of this section;

(2) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*);

(3) Reflect professional judgment as to the highest possible standards achievable by the students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of IDEA (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014.

(f) The Secretary will adopt English language proficiency standards that:

(1) Are derived from the four (4) recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the challenging academic standards.

§ 30.105 How will the Secretary implement requirements for academic content assessments?

(a) *Academic assessments.* The BIE will implement a set of high quality student academic assessments in mathematics, reading or language arts, and science. As appropriations become available, BIE will implement an assessment in tribal civics.

(b) *Requirements for academic assessments.* The academic assessments must:

(1) Except with respect to alternate assessments for students with the most significant cognitive disabilities, be:

(i) The same academic assessments used to measure the achievement of all BIE-funded school students; and

(ii) Administered to all BIE-funded school students, including the following highly-mobile student populations:

(A) Students with status as a migratory child;

(B) Students with status as a homeless child or youth;

(C) Students with status as a child in foster care;

(D) Students with status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty;

(2) Be aligned with the BIE's challenging academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;

(3) Be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards; objectively measure academic achievement, knowledge, and skills; and use tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information, except that this provision does not preclude the use of:

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(4) Be of adequate technical quality for each purpose required under the Act and consistent with the requirements of this section, the evidence of which will be made public, including on the BIE website;

(5) Be administered:

(i) In the case of mathematics and reading or language arts:

(A) In each of grades three (3) through eight (8); and

(B) At least once in grades nine (9) through twelve (12);

(ii) In the case of science, not less than one time during:

(A) Grades three (3) through five (5);

(B) Grades six (6) through nine (9); and

(C) Grades ten (10) through twelve (12); and

(iii) In the case of any other subject chosen by the BIE, at the discretion of the BIE;

(6) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills, such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content, which may:

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(7) At the BIE's discretion, be administered through:

(i) A single summative assessment; or

(ii) Multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(8) Produce individual student interpretive, descriptive, and diagnostic reports, consistent with paragraph (b)(3) of this section, regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(9) Enable results to be disaggregated:

(i) Within the Bureau and each BIE-funded school by:

(A) Each major racial and ethnic group;

(B) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(C) Children with disabilities as defined in section 602(3) of the IDEA compared to children without disabilities;

(D) English proficiency status;

(E) Gender;

(F) Migrant status;

(G) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney–Vento Homeless Assistance Act, as amended;

(H) Status as a child in foster care; and

(I) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty.

(ii) Disaggregation is not required in the cases in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(10) Enable itemized score analyses to be produced and reported, consistent with paragraph (b)(3) of this section, to BIE-funded schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items; and

(11) Be designed and developed:

(i) To be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) To the extent practicable, using the principles of universal design for learning. For the purposes of this section, ''universal design for learning'' means a scientifically valid framework for guiding educational practice that:

(A) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and English learners.

(c) *Exception for advanced mathematics in middle school.* The BIE will determine the use of this exemption in the Agency Plan.

(d) *Computer adaptive assessments.* (1) BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this section, provided the computer adaptive assessments meet the requirements of this section, except that:

(i) The requirement that the same academic assessments must be used to measure the achievement of all BIE-funded school students and that the assessments must be administered to all BIE-funded school students may not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and

(ii) Such assessment:

(A) Must measure, at a minimum, each student's academic proficiency based on the challenging academic standards for the student's grade level and growth toward such standards; and

(B) May measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the accountability system.

(2) In developing and administering computer adaptive assessments for students with the most significant cognitive disabilities and English learners:

(i) The BIE will ensure that the computer adaptive assessments for students with the most significant cognitive disabilities:

(A) Assess a student's academic achievement based on the challenging academic content standards for the grade in which the student is enrolled;

(B) Meet the requirements of this section and §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(C) Assess the student's academic achievement to measure, in the subject being assessed, whether the student is

performing at the student's grade level; and

(ii) The BIE may provide for the use of computer adaptive assessments that:

(A) Meet the requirements §§ 30.106 through 30.110 except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(B) Assess the student's English language proficiency, which may include growth towards such proficiency, in order to measure the student's acquisition of English.

(e) *Peer review and future guidance on academic assessments.* (1) The BIE assessments required by these regulations must undergo peer review with the exception of tribal civics and non-content Native American language academic assessments.

(2) BIE will develop guidance on the use of academic assessments in a Native American language for purposes of compliance with these regulatory requirements, including evidence of technical validity and reliability, in consultation with the Department of Education, Tribes, and other stakeholders.

(f) *Rule of construction on parental rights.* Nothing in this section may be construed as preempting tribal law at a tribally controlled school regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph (f).

(g) *Limitation on assessment time.* The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

(h) *Students in Native American language schools or programs.* The BIE is not required to assess, using an assessment written in English, student achievement in meeting the BIE's challenging State academic standards in reading/language arts, mathematics, or science for a student who is enrolled in a school or program that provides instruction primarily in a Native American language if:

(1) The program or school provides an assessment in the Native American language to all students in the program or school and:

(i) Submits evidence to the BIE according to BIE guidelines developed under paragraph (e)(2) of this section regarding such assessment's technical validity and reliability for the purposes for which it is intended; and

(ii) BIE submits this evidence to Department of Education for approval; and

(2) For an English learner the BIE continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under § 30.110, and provides appropriate services to enable him or her to attain proficiency in English.

§ 30.106 How will the Secretary provide for the inclusion of all students in assessments?

The Secretary will provide assessment instruments that allow for:

(a) The participation of all students, generally;

(b) The participation of students with disabilities, as detailed in §§ 30.107 and 30.108; and

(c) The participation of English learners, as detailed in § 30.109.

§ 30.107 How will the Secretary include students with disabilities in assessments?

(a) The BIE and BIE-funded schools must ensure that students with disabilities have the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for students with disabilities, including students with the most significant cognitive disabilities, necessary to measure the academic achievement of such children relative to the BIE's challenging academic standards or alternate academic achievement standards described in § 30.104(d) and (e).

(b) The Secretary must include students with disabilities in all assessments, with appropriate accommodations. For purposes of this section, students with disabilities, collectively, are:

(1) All children with disabilities as defined under section 602(3) of the IDEA;

(2) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a) of this section; and

(3) Students with disabilities covered under other acts, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended; and

(ii) Title II of the Americans with Disabilities Act (ADA), as amended.

(c) Appropriate accommodations for those students described in paragraph (b) of this section will be determined by:

(1) For each student under paragraphs (b)(1) and (2) of this section, the student's IEP team;

(2) For each student under paragraph (b)(3)(i) of this section, the student's placement team; or

(3) For each student under paragraph (b)(3)(ii) of this section, the individual or team designated by the school to make these decisions.

(d)(1) Except as provided in paragraph (d)(2) of this section, a student with a disability must be assessed with an assessment aligned with the BIE's challenging academic standards for the grade in which the student is enrolled.

(2) A student with the most significant cognitive disabilities may be assessed with:

(i) The general assessment under § 30.106(b); or

(ii) The alternate assessment under § 30.108 aligned with the BIE's challenging academic content standards for the grade in which the student is enrolled and the BIE's alternate academic achievement standards.

(e) The BIE and school must ensure that general and special education teachers, paraprofessionals, teachers of English learners, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments, and know how to make use of appropriate accommodations during assessment for all students with disabilities, consistent with section 1111(b)(2)(B)(vii)(III) of the Act.

(f) The BIE and school must ensure that the use of appropriate accommodations under paragraph (c) of this section does not deny a student with a disability:

(1) The opportunity to participate in the assessment; and

(2) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

§ 30.108 How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities?

(a) *Alternate assessments aligned with alternate academic achievement standards.* The BIE will provide for alternate assessments aligned with the challenging academic content standards for the grade in which the student is enrolled and alternate academic achievement standards described in § 30.104(d) and (e) for students with the most significant cognitive disabilities. The BIE must:

(1) Consistent with paragraph (b) of this section, ensure that, for each subject, the total number of students assessed in the subject using the alternate assessments does not exceed one (1) percent of the total number of all students in all BIE-funded schools who are assessed in the subject;

(2) With regard to the percentage of students assessed under this paragraph (a):

(i) Not prohibit a BIE-funded school from assessing more than one (1)

percent of its assessed students in any subject for which assessments are administered with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that the BIE-funded school submit by October 1 information into the BIE's student information system regarding what assessment the student is to take and which must be consistent with the individualized education program (IEP);

(iii) Provide appropriate oversight of a BIE-funded school that is required to submit information to the BIE; and

(iv) Make the information submitted by a BIE-funded school under paragraph (a)(2)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student;

(3) With regard to IEP teams:

(i) Establish clear and appropriate guidelines, consistent with section 612(a)(16)(C) of the IDEA, and provide technical assistance as requested in writing, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a BIE definition of ''students with the most significant cognitive disabilities'' that addresses factors related to cognitive functioning and adaptive behavior, such that:

(A) The identification of a student as having a particular disability as defined in the IDEA or as an English learner does not determine whether a student is a student with the most significant cognitive disabilities;

(B) A student with the most significant cognitive disabilities is not identified solely on the basis of the student's previous low academic achievement, or the student's previous need for accommodations to participate in general BIE assessments; and

(C) A student is identified as having the most significant cognitive disabilities because the student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on the BIE's challenging academic content standards for the grade in which the student is enrolled; and

(ii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of BIE and BIE-funded school policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(4) Ensure that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A))):

(i) That their child's academic achievement will be measured based on the alternate academic achievement standards; and

(ii) How participation in the assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(5) Promote, consistent with the IDEA (20 U.S.C. 1400 *et seq.*), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Describe the steps the Bureau has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;

(7) Describe that general and special education teachers, and other appropriate staff:

(i) Know how to administer the alternate assessments; and

(ii) Make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph (a);

(8) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with significant cognitive disabilities:

(i) Participating in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Who are tested based on the BIE's challenging academic standards for the grade level in which the student is enrolled; and

(9) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(b) *Responsibility under IDEA.* Subject to the authority and requirements for the IEP team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(a)(16)(C)) and paragraph (a)(1) of this section, will determine when a child with a significant cognitive disability may participate in an alternate assessment aligned with the alternate academic achievement standards.

§ 30.109 How will the Secretary include English learners in academic content assessments?

(a) *English learners.* English learners must be:

(1) Assessed in a valid and reliable manner; and

(2) Provided appropriate accommodations on assessments administered including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what the students know and can do in academic content areas, until the students have achieved English language proficiency, consistent with standardized BIE-determined exit procedures.

(b) *Language or form of assessment.* Notwithstanding paragraph (a)(2) of this section, BIE-funded schools must provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for three (3) or more consecutive school years, except that if the BIE-funded school determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what the student knows and can do, the BIE-funded school may make a determination to assess the student in the appropriate language other than English for a period that does not exceed two (2) additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests (written in English) of reading or language arts. This requirement does not permit either the BIE or BIE-funded schools to exempt English learners from participating in the BIE's assessment system.

(c) *BIE responsibilities.* The BIE must:

(1) Disseminate information and resources regarding English learners to, at a minimum, BIE-funded schools, and parents;

(2) Promote the use of accommodations for English learners to ensure that all English learners are able to participate in academic instruction and assessments; and

(3) Provide technical assistance when requested in writing.

(d) *Exception for recently arrived English learners.* With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than twelve (12) months, the BIE may choose to:

(1) Exclude:

(i) The English learner from one administration of the reading or language arts assessment required under § 30.105; and

(ii) The English learner's results on any of the assessments required under § 30.105(b)(5)(i) or § 30.110 for the first year of the English learner's enrollment in the school for the purposes of the BIE-determined accountability system under § 30.111; or

(2) Assess, and report the performance of:

(i) The English learner on the reading or language arts and mathematics assessments required under § 30.105(b)(5)(i) in each year of the student's enrollment in such a school; and

(ii) For the purposes of the BIE-determined accountability system:

(A) For the first year of the student's enrollment in the school, exclude the results on the assessments described in paragraphs (d)(1)(i) and (ii) of this section;

(B) Include a measure of student growth on the assessments described in paragraphs (d)(1)(i) and (ii) of this section in the second year of the student's enrollment in the school; and

(C) Include proficiency on the assessments in reading or language arts and mathematics described in this paragraph (d) in the third year of the student's enrollment in such a school, and each succeeding year of enrollment.

(e) *English learner subgroup.* With respect to a student previously identified as an English learner and for not more than four (4) years after the student ceases to be identified as an English learner, the BIE may include the results of the student's academic content assessments within the English learner subgroup of the subgroups of students as defined in § 30.101 for the purposes of the BIE-determined accountability system.

§ 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?

(a) The BIE will ensure that BIE-funded schools will administer a valid and reliable annual assessment of English proficiency to all English learners in the schools served by the BIE.

(b) The BIE will require BIE-funded schools to use the assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in kindergarten through grade twelve (12).

(c) The English language proficiency assessment must be aligned with the BIE's English language proficiency standards described in § 30.104(f).

(d) The assessment will be implemented, developed, and used consistent with the requirements of this section.

(e) The assessment will provide coherent and timely information about each student's attainment of the BIE's English language proficiency standards to parents.

(f) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment such that there are no appropriate accommodations for the affected domain(s) (*e.g.,* a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student's IEP team, 504 team, or by the individual or team designated by the BIE-funded school to make these decisions under title II of the ADA, then the BIE must assess the student's English language proficiency based on the remaining domains in which it is possible to assess the student.

(g) The BIE must provide for an alternate English language proficiency assessment for English learners with the most significant cognitive disabilities who cannot participate in the assessment under this paragraph (g) even with appropriate accommodations.

(h) BIE will provide technical assistance, including training teachers on how to administer assessments, in regard to English language proficiency assessments and alternate English language proficiency assessments to BIE-funded schools as requested in writing.

§ 30.111 How will the Secretary implement requirements for an accountability system?

(a) The Secretary will define accountability system for BIE-funded schools consistent with this section and subpart C of this part, including provisions for a single Bureau-wide accountability system and system of support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools.

(b) To improve student academic achievement and school success among all elementary and secondary schools within the BIE-funded school system, the Secretary will develop and implement a single, Bureau-wide accountability system that:

(1) Is based on the Bureau's challenging academic standards and academic assessments;

(2) Is informed by ambitious long-term goals and measurements of interim progress;

(3) Includes all the accountability indicators described paragraph (e) of this section;

(4) Takes into account the achievement of all elementary and secondary school students within the BIE-funded school system;

(5) Is the same accountability system used to annually, meaningfully differentiate all schools within the BIE-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement; and

(6) Includes the process that the Bureau will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the BIE-funded school system accountable for student academic achievement and school success.

(c) The inclusion of science and tribal civics will be phased into the Secretary's requirements for accountability system starting as a school quality or student success indicator and their continued use in such manner will be revisited as the accountability system is implemented.

(d) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will establish long-term goals and measurements of interim progress that will include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau's annual assessments in mathematics and reading or language arts under § 30.105(b)(5)(i), and high school graduation rates, including the four (4)-year adjusted cohort graduation rate, or at BIE's discretion one or more extended year graduation cohorts, and that will:

(1) Use the same multi-year length of time for all students and for each subgroup of students within the BIE-funded school system to meet the goals; and

(2) Take into account, for subgroups of students who are behind on the measurements of academic achievement

and high school graduations rates, the improvement necessary to make significant progress in closing Bureau-wide proficiency and graduation rate gaps.

(e) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will include a long-term goal and measurements of interim progress for increases in the percentage of English learner students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under § 30.110 within a timeline determined by the Bureau.

(f) For all students and separately for each subgroup of students the Bureau will establish and annually measure the following accountability indicators:

(1) For all schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section, academic achievement:

(i) As measured by proficiency on the annual assessments of mathematics and reading or language arts described in § 30.105(b)(5)(i); and

(ii) At the BIE's discretion, for each high school, growth, as measured by such annual assessments.

(2) For elementary and secondary schools that are not high schools:

(i) A measure of student growth, if determined to be appropriate by the BIE; or

(ii) Another valid and reliable Bureau-wide academic indicator that allows for meaningful differentiation in school performance.

(3) For high schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section:

(i) The four (4)-year adjusted cohort graduation rate; and

(ii) At the BIE's discretion, the extended-year adjusted graduation cohort rate, as defined in paragraph (j) of this section.

(4) For all schools, progress in achieving English language proficiency, as defined by the BIE and measured by the assessments of English language proficiency described in § 30.110, within a BIE-determined timeline for all English learners:

(i) In each of grades three (3) through eight (8); and

(ii) In the high school grade for which such English learners are otherwise assessed in mathematics and reading or language arts.

(5) For all schools, not less than one indicator of school quality or student success that:

(i) Allows for meaningful differentiation in school performance;

(ii) Is valid, reliable, comparable, and Bureau-wide (with the same indicator or indicators used for each grade span, as such term is determined by the BIE); and

(iii) May include one or more of the following measures:

(A) Student or Educator engagement;

(B) Chronic absenteeism;

(C) Student access to and completion of advanced coursework;

(D) Postsecondary readiness;

(E) School climate and safety; and

(F) Any other indicator the BIE chooses that meets the requirements of this section.

(g) The BIE will establish a system for meaningfully differentiating, annually, all schools that will:

(1) Be based on all indicators described paragraph (f) of this section for all students and for each subgroup of students; and

(2) With respect to paragraphs (f)(1) through (4) of this section, afford:

(i) Substantial weight to each such indicator;

(ii) In the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the BIE and described in paragraph (f)(5) of this section, in the aggregate; and

(iii) Include differentiation of any such school in which any subgroup of students is consistently underperforming, as determined by the BIE, based on all indicators described in paragraph (f) of this section.

(h) Based on the system of meaningful differentiation described in paragraph (g) of this section, the BIE will establish a methodology to identify:

(1) Beginning with the first full school year following April 27, 2020, and at least once every three (3) years thereafter, one (1) BIE-wide category of schools for comprehensive support and improvement, which will include:

(i) Not less than the lowest-performing five (5) percent of all schools receiving Title I funding;

(ii) All high schools failing to graduate one third (⅓) or more of their students; and

(iii) All schools identified for additional targeted support and improvement that receive ESEA Title I funding and do not meet exit criteria as provided in § 30.124(a)(2).

(2) The BIE will provide technical assistance to all schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support.

(i) The Bureau's accountability system will annually measure the achievement of at least ninety-five (95) percent of all students, and ninety-five (95) percent of each subgroup of students, who are enrolled in a school within the BIE-funded school system on the Bureau's assessments. The denominator for the purpose of measuring, calculating, and reporting on the academic achievement indicator will be the greater of:

(1) Ninety-five (95) percent of all students, or ninety-five (95) percent of each subgroup of students; or

(2) The number of students participating in the assessments.

(j) The performance of students that have not attended the same BIE-funded school for at least half (½) of a school year will not be included in the academic achievement, other academic, progress in achieving English language proficiency, or school quality or student success indicators for that school year, but will be used for the purpose of reporting on the Bureau and school report cards for that school year.

(k) Extended-year adjusted cohort graduation rate means the fraction—

(1) The denominator of which consists of the number of students who form the original cohort of entering first-time students in grade nine (9) enrolled in the high school, adjusted by—

(i) Adding the students who joined that cohort, after the date of the determination of the original cohort; and

(ii) Subtracting only those students who left that cohort, after the date of the determination of the original cohort, as described in paragraph (l) of this section; and

(2) The numerator of which—

(i) Consists of the sum of—

(A) The number of students in the cohort, as adjusted under paragraph (k)(1) of this section, who earned a regular high school diploma before, during, or at the conclusion of—

(*1*) One or more additional years beyond the fourth year of high school; or

(*2*) A summer session immediately following the additional year of high school; and

(B) All students with the most significant cognitive disabilities in the cohort, as adjusted under paragraph (k)(1) of this section, assessed using the alternate assessment aligned to alternate academic achievement standards under § 30.108 and awarded an alternate diploma that is—

(*1*) Standards-based;

(*2*) Aligned with the requirements for the regular high school diploma; and

(*3*) Obtained within the time period for which the BIE ensures the availability of a free appropriate public education under 20 U.S.C. 1412(a)(1); and

(ii) Does not include any student awarded a recognized equivalent of a diploma, such as a general equivalency

diploma, certificate of completion, certificate of attendance, or similar lesser credential.

(l) To remove a student from a cohort, a school or local educational agency must require documentation, or obtain documentation from the BIE, to confirm that the student has transferred out, immigrated to another country, transferred to a prison or juvenile facility, or is deceased.

(m) For purposes of this paragraph (m), the term ''transferred out'' has the meaning given the term in ESEA section 8101(25)(C).

(n) For those high schools that start after grade nine (9), the original cohort will be calculated for the earliest high school grade students attend no later than the date by which student membership data is collected annually by the BIE.

Subpart B—Accountability, Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements

§ 30.112 May a tribal governing body or school board waive the Secretary's requirements for standards, assessments, and an accountability system?

Yes. A tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and an accountability system in part or in whole, and the tribal governing body or school board's alternative requirements will apply if they meet the requirements of section 1111, taking into account the unique circumstances and needs of the applicable school or schools and the students served by such school or schools, and are approved by the Secretary and the Secretary of Education. If the Secretary and the Secretary of Education do not approve the tribal governing body or school board's proposal for alternative requirements, the Secretary's requirements under this part continue to apply. Depending on the nature and content of such proposals for alternative requirements, and subject to the availability of appropriations, alternative requirements will generally be effective in the school year following the school year they are approved. Where a tribal governing body or school board proposes to use existing State requirements, approval of the use of such requirements is dependent upon the agreement of the applicable State.

§ 30.113 How does a tribal governing body or school board waive the Secretary's requirements?

(a) A tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and an accountability system, in part or in whole.

(b) The tribal governing body or school board must notify the Secretary and the Secretary of Education in writing of the decision to waive the Secretary's requirements in part or in whole.

(c) Within sixty (60) days of the decision to waive the Secretary's requirements in part or in whole, the tribal governing body or school board must submit to the Secretary for review and, in coordination with the Secretary of Education, approval, a proposal for alternative requirements that are consistent with section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served. The Secretary encourages a tribal governing body or school board to request and receive technical assistance well in advance of submission of a plan to the Secretary for review. The tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments, and an accountability system until a proposal for alternative requirements has been approved and until alternative requirements become effective.

(d) A tribal governing body or school board may request in writing an extension of the sixty (60) day deadline for the provision of technical assistance.

(e) A tribal governing body or school board must use this process anytime a tribal governing body or school board proposes alternative requirements for standards, assessments, and an accountability system, or proposes changes to approved alternative requirements.

(f) The Secretary will work with the Secretary of Education to develop and make available templates for proposals for alternative requirements that tribal governing bodies and school boards may use to assist in the development of such proposals for alternative requirements.

§ 30.114 What should a tribal governing body or school board include in a proposal for alternative requirements?

Proposals for alternative requirements must include an explanation of how the alternative proposal meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools.

§ 30.115 May proposed alternative requirements use parts of the Secretary's requirements?

Yes, a tribal governing body or school board may use the Secretary's requirements in part or in whole. Alternative proposals must clearly identify any retained portions of the Secretary's requirements.

§ 30.116 Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements?

The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a tribal governing body or a school board that seeks to develop alternative requirements. A tribal governing body or school board seeking such assistance must submit a request in writing to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

§ 30.117 What is the process for requesting technical assistance?

(a) Requests for technical assistance must be in writing from a tribal governing body or school board to the Director of BIE and the Department of Education's Assistant Secretary of the Office of Elementary and Secondary Education.

(b) The Director, or designee, will acknowledge receipt of a request for technical assistance.

(c) No later than thirty (30) days after receiving the original request, the Director will identify a point-of-contact and begin the process of providing technical assistance. The Director and requesting tribal governing body or school board will work together to identify the form, substance, and timeline for the assistance.

§ 30.118 When should the tribal governing body or school board request technical assistance?

A tribal governing body or school board may request technical assistance in writing at any time. A tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to waive the requirements established by the Secretary in order to maximize the time available for technical assistance.

§ 30.119 How does the Secretary review and approve alternative requirements?

(a) The Secretary and the Secretary of Education will jointly approve plans for alternative requirements for standards, assessments, and an accountability system or determine that the proposed

alternative requirements do not meet the requirements of section 1111 of the Act.

(1) The Secretary will consult with the Secretary of Education through the review of a proposal for alternative requirements.

(2) Upon receipt of a proposal for alternative requirements for standards, assessments, and an accountability system, in part or in whole, the Secretary will begin coordination with the Secretary of Education on review and approval of the proposal.

(3) The Secretary will provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal and every thirty (30) days thereafter to discuss the stage of the review process.

(b) If the Secretary and the Secretary of Education approve a proposal for alternative requirements, the Secretary will:

(1) Promptly notify the tribal governing body or school board; and

(2) Indicate the date for which the alternative proposal will be effective.

(c) If a proposal for alternative requirements is not approved, the tribal governing body or school board will be notified that:

(1) The proposal has not been approved; and

(2) The reasons why the alternative proposal was not approved.

(d) If a proposal for alternative requirements is not approved, the Secretary will provide technical assistance to the tribal governing body or school board to help to overcome the reasons why the alternative proposal was not approved.

(e) If a proposal for alternative requirements is not approved, or is not moving forward, then Tribes may individually request formal consultation with the Secretary and Secretary of Education.

Subpart C—Support and Improvement

§ 30.120 How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities?

The Secretary will notify each BIE-funded school that has been identified for comprehensive support and improvement as described in § 30.111(h).

§ 30.121 How will the Secretary implement requirements for comprehensive support and improvement activities?

(a) Once notified that it has been identified for comprehensive support and improvement, each BIE-funded school is required to develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive support and improvement plan to improve student outcomes that:

(1) Is informed by all indicators described in § 30.111(f), including student performance against BIE-determined long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is based on a school-level needs assessment;

(4) Identifies resource inequities, which may include a review of school-level budgeting, to be addressed through implementation of such comprehensive support and improvement plan;

(5) Is approved by the school and the BIE; and

(6) Upon approval and implementation, is monitored and periodically reviewed by the BIE.

(b) In regard to high schools that have been identified as having failed to graduate one-third or more of their students, the BIE may:

(1) Permit differentiated improvement activities that use evidence-based interventions in the case of a school that predominantly serves students:

(i) Returning to education after having exited secondary school without a regular high school diploma; or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements; and

(2) In the case of a school that has a total enrollment of fewer than 100 students, permit the BIE-funded school to forego implementation of improvement activities.

§ 30.122 How will the Secretary implement requirements for targeted support and improvement activities?

(a) Using the system of annual meaningful differentiation of schools described in § 30.111(b)(5) and (f), the BIE will notify each BIE-funded school in which any subgroup of students is consistently underperforming in accordance with § 30.111(g)(2)(iii).

(b) Each school that has been notified must develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a school-level targeted support and improvement plan to improve student outcomes based on the BIE's indicators for each subgroup of students that was the subject of such notification that:

(1) Is informed by all indicators described in § 30.111(f), including performance against long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is approved by the BIE prior to implementation of such plan;

(4) Is monitored by the BIE, upon submission and implementation; and

(5) Results in additional action following unsuccessful implementation of such plan after a number of years determined by the BIE.

§ 30.123 How will the Secretary implement requirements to identify schools for additional targeted support?

(a) The BIE will identify for additional support and improvement each school with one (1) or more subgroups that is performing as poorly as the lowest-performing five (5) percent of all Title I schools identified for comprehensive support and improvement in the BIE system using the BIE's system of annual meaningful differentiation of schools described in § 30.111(g).

(b) Each school identified for additional targeted support and improvement must develop and implement a school-level targeted support and improvement plan and identify resource inequities (which may include a review of BIE-funded school level budgeting), to be addressed through implementation of the plan.

§ 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

(a) The Secretary will establish exit criteria for:

(1) Schools identified for comprehensive support and improvement, which, if not satisfied within a BIE-determined number of years (not to exceed four (4) years), will result in more rigorous BIE-determined action, such as implementation of interventions (which may include addressing school-level operations); and

(2) Schools identified for additional targeted support, which, if not satisfied within a BIE-determined number of years, will, in the case of schools receiving Title I funds, result in identification of the school by the BIE for comprehensive support and improvement.

(b) The Secretary will also periodically review resource allocation to support school improvement.

Subpart D—Responsibilities and Accountability

§ 30.125 What is required for the Bureau to meet its reporting responsibilities?

The Bureau is required to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of section 1111(h) of the

Act. The BIE's annual report card will be made available on the internet along with all BIE-funded school report cards.

§ 30.126 What information collections have been approved?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0191. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: December 20, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Editorial note: This document was received for publication by the Office of the Federal Register on March 19, 2020.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0058]

RIN 1625–AA00

Safety Zone; Monongahela River Mile 23.8 to Mile 26.0, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Monongahela River from mile 23.8 to mile 26.0. This action is necessary to protect persons, vessels, and the marine environment from potential hazards associated with power line work across the river near Elrama Power Plant, Pittsburgh, PA, during an electrical conductor pull from March 23, 2020 through April 6, 2020. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective without actual notice from March 26, 2020 through April 6, 2020. For the purposes of enforcement, actual notice will be used from March 23, 2020 through March 26, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0058 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Trevor Vannatta, Waterways Management U.S. Coast Guard; telephone 412–221–0807, email *Trevor.J.Vannatta@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Pittsburgh
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On November 12, 2019, the Duquesne Light Company notified the Coast Guard that it will be conducting an electrical conductor pull on March 23, 2020, in order to replace existing electrical conductor with new higher ampacity electrical conductor. The conductor pull will take place between mile 23.8 and mile 26 on the Elrama Power Plant side of the Monongahela River. In response, on February 3, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled USCG–2020–0058_NPRM_D8 (85 FR 5909). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this conductor pull project. During the comment period that ended March 4, 2020, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Pittsburgh (COTP) has determined that potential hazards from the conductor pull include danger to the navigability of the waterway due to obstruction by equipment. The Captain of the Port (COTP) Marine Safety Unit Pittsburgh has determined that potential hazards associated with ongoing work would be a safety concern for anyone transiting the river during the maintenance activity. Possible hazards include risks of injury or death from near or actual contact among working vessels and mariners traversing through the safety zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 3, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from March 23, 2020 through April 6, 2020. The safety zone would cover all navigable waters from mile 23.8 to mile 26.0 on the Monongahela River near Pittsburgh, PA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after a scheduled maintenance activity at the Elrama Power Plant. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. Breaks in the conductor pull will occur during the enforcement periods, which will allow vessels to pass through the safety zone. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The zone will impact a 2.2 mile stretch of the Monongahela River and only be enforced during active maintenance periods, and vessel traffic would be able to safely transit around the safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone from mile 23.8 to mile 26.0 on the Monongahela River near Pittsburgh, PA from March 23, 2020 through April 6, 2020. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0058 to read as follows:

§ 165.T08–0058 Safety Zone; Monongahela, Mile 23.8 to Mile 26.0, Pittsburgh, PA

(a) *Location.* The following area is a safety zone: All navigable waters of the Monongahela River from mile 23.8 to mile 26.

(b) *Effective period.* This section is effective from March 23, 2020 through April 6, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at (412) 221–0807 or on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative.

Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: March 20, 2020.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2020–06243 Filed 3–25–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0838; FRL–10006–95–Region 4]

Air Plan Approval; Tennessee; Volatile Organic Compounds Definition Rule Revision for Chattanooga

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP), provided by the Tennessee Department of Environment and Conservation on behalf of the Chattanooga-Hamilton County Air Pollution Control Bureau (Bureau) through a letter dated September 12, 2018. The revision makes changes to the definition of volatile organic compounds (VOC) that are consistent with changes to state and federal regulations. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective April 27, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0838. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Chattanooga portion of the Tennessee SIP [1] that were provided to EPA through a letter dated September 12, 2018.[2] EPA is finalizing approval of the portions of this SIP revision that make changes to air quality rules in Chattanooga Ordinance Part II, Chapter 4, Section 4–2, *Definitions.*[3] [4] [5] The September 12, 2018, SIP revision makes changes to the definition of ''Volatile Organic Compounds'' in paragraphs 1 and 2 of that section to make the Chattanooga portion consistent with changes to Federal and SIP-approved Tennessee regulations.

In a notice of proposed rulemaking (NPRM) published on May 20, 2019 (84 FR 22786), EPA proposed to approve the aforementioned changes to Part II, Chapter 4, Section 4–2, *Definitions,* in the Chattanooga portion of the Tennessee SIP. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before June 19, 2019. EPA received one comment on the proposed action. That comment is discussed below. EPA issued a minor clarification of its May 20, 2019 NPRM in a second NPRM published on November 25, 2019 (84 FR 64806) which also included a proposal to approve changes to Chattanooga's SIP-approved open burning rules. EPA received two comments on the proposed action regarding the open burning rules, which are not relevant to the changes to Part II, Chapter 4, Section 4–2, *Definitions* and will be addressed in a separate final action.

II. Response to Comment

Comment: The Commenter asks why EPA needs to approve this SIP revision and suggests that states should not have to update their regulations and SIP whenever EPA changes a definition. The Commenter also suggests that EPA should establish a policy exempting such changes from needing a SIP revision and EPA approval.

Response: Although the purpose of the SIP revision is to make the definition of VOC in the Chattanooga portion of the Tennessee SIP consistent with the definition of VOC in the Federal and SIP-approved Tennessee regulations, EPA did not impose a requirement that Tennessee or the Bureau, or any other state or local entity, revise its SIP to adopt the changes to the Federal definition that are addressed in the September 12, 2018 SIP revision. As explained herein and in the NPRM, *see* 84 FR at 22786, the Bureau, through Tennessee, requested this SIP revision, which has the effect of excluding additional compounds regulated as VOC. Pursuant to CAA section 110(k)(3), 42 U.S.C. 7410(k)(3), ''EPA shall approve'' a SIP revision ''if it meets all of the applicable requirements'' of the Act. Thus, as a

[1] The Bureau is comprised of Hamilton County and the municipalities of Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy Daisy, and Walden. The Bureau recommends regulatory revisions, which are subsequently adopted by the eleven jurisdictions. The Bureau then implements and enforces the regulations, as necessary, in each jurisdiction.

[2] EPA received the SIP revision on September 18, 2018.

[3] In this final action, EPA is also approving substantively identical changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 2 (9/6/17); City of Collegedale—Section 14–302 (10/16/17); City of East Ridge—Section 8–2 (10/12/17); City of Lakesite—Section 14–2 (11/2/17); City of Red Bank—Section 20–2 (11/21/17); City of Soddy-Daisy—Section 8–2 (10/5/17); City of Lookout Mountain—Section 2 (11/14/17); City of Ridgeside—Section 2 (1/16/18); City of Signal Mountain—Section 2 (10/20/17); and Town of Walden—Section 2 (10/16/17).

[4] Because the air pollution control regulations/ordinances adopted by the jurisdictions within the Bureau are substantively identical, EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity.

[5] EPA finalized its approval of a separate portion of the September 12, 2018 SIP submittal through a July 31, 2019 (84 FR 37099) rulemaking. EPA will act on the remaining portions of the September 12, 2018 submittal in a separate action.

matter of law, EPA is required to approve a SIP revision if it meets the Act's requirements, as this Tennessee SIP revision does.

To the extent the Commenter is suggesting EPA establish a policy regarding such SIP revisions, EPA acknowledges the comment but notes that it is outside the scope of the action and does not require a substantive response.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Chattanooga City Code, Part II, Chapter 4, Section 4–2, locally effective on October 3, 2017,[6] which make changes to definitions.[7] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[8]

IV. Final Action

EPA is taking final action to approve the changes to the definition of VOC in Chapter 4 of Part II, Section 4–2, of the Chattanooga portion of the Tennessee SIP because the changes are consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: February 13, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. In § 52.2220, in paragraph (c), amend Table 4 by revising the entry for ''Section 4–2'' under the heading ''Article I. In General'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

[6] In the May 20, 2019, NPRM, EPA inadvertently misidentified the locally effective date for Chattanooga's Section 4–2 as January 23, 2017. The correct date is October 3, 2017.

[7] EPA's approval also includes regulations/ordinances submitted for the other ten jurisdictions within the Bureau. *See* footnote 3, *supra.*

[8] *See* 62 FR 27968 (May 22, 1997).

TABLE 4—EPA APPROVED CHATTANOOGA REGULATIONS

State section	Title/subject	Adoption date	EPA approval date	Explanation
Article I. In General				
*	*	*	*	* * *
Section 4–2	Definitions	10/3/17	3/26/20, [Insert citation of publication].	EPA's approval includes the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Chattanooga-Hamilton County Air Pollution Control Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 2 (9/6/17); City of Collegedale—Section 14–302 (10/16/17); City of East Ridge—Section 8–2 (10/12/17); City of Lakesite—Section 14–2 (11/2/17); City of Red Bank—Section 20–2 (11/21/17); City of Soddy-Daisy—Section 8–2 (10/5/17); City of Lookout Mountain—Section 2 (11/14/17); City of Ridgeside—Section 2 (1/16/18); City of Signal Mountain—Section 2 (10/20/17); and City of Walden—Section 2 (10/16/17).
*	*	*	*	* * *

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[FR Doc. 2020–05913 Filed 3–25–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066]

RTID 0648–XY092

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Community Development Quota (CDQ) pollock directed fishing allowance (DFA) from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2020 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2020, through 2400 hrs, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2020 pollock total allowable catch (TAC) allocated to the CDQ DFA is 1,900 mt as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020).

As of March 18, 2020, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the Bering Sea subarea CDQ DFA. The 2020 Bering Sea subarea pollock incidental catch allowance remains at 47,453 mt. As a result, the 2020 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) are revised as follows: 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) is revised to make 2020 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2020 CDQ pollock allocation established at § 679.20(a)(5).

TABLE 4—FINAL 2020 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2020 Allocations	2020 A season [1]		2020 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,426,900	n/a	n/a	n/a
CDQ DFA	144,400	64,980	40,432	79,420
ICA [1]	47,453	n/a	n/a	n/a

TABLE 4—FINAL 2020 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2020 Allocations	2020 A season [1]		2020 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Total Bering Sea non-CDQ DFA	1,235,048	555,771	345,813	679,276
AFA Inshore	617,524	277,886	172,907	339,638
AFA Catcher/Processors [3]	494,019	222,309	138,325	271,710
Catch by C/Ps	452,027	203,412	n/a	248,615
Catch by CVs [3]	41,992	18,896	n/a	23,095
Unlisted C/P Limit [4]	2,470	1,112	n/a	1,359
AFA Motherships	123,505	55,577	34,581	67,928
Excessive Harvesting Limit [5]	216,133	n/a	n/a	n/a
Excessive Processing Limit [6]	370,514	n/a	n/a	n/a
Aleutian Islands subarea ABC	55,120	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	17,100	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	0
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	16,536	n/a	n/a	n/a
542	8,268	n/a	n/a	n/a
543	2,756	n/a	n/a	n/a
Bogoslof District ICA [8]	75	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3.7 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(i) through (iii), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC for AI pollock.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by eligible catcher vessels with a C/P endorsement delivering to listed C/Ps, unless there is a C/P sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Islands pollock. Since the pollock fishery opened January 20, 2020, it is important to immediately inform the industry as to the Bering Sea subarea pollock CDQ DFA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–06332 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 59
Thursday, March 26, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 59

[Docket No. FAA–2020–0206; Product Identifier 2019–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that certain airplanes have outdated magnetic variation (MV) tables inside navigation systems. This proposed AD would require revising the existing airplane flight manual (AFM) to update the Flight Management System (FMS), Inertial Reference System (IRS), and Attitude and Heading Reference System (AHRS) limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 11, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0206; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0206; Product Identifier 2019–NM–202–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–40, dated November 1, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0206.

This proposed AD was prompted by a determination that certain airplanes have outdated MV tables inside navigation systems. The FAA is proposing this AD to address outdated MV tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the Primary Flight Displays (PFDs) and Multi-Function Displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs (*e.g.,* outdated MV tables can lead to significantly inaccurate heading, course, and bearing calculations). See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which describes procedures for updating, among other systems, the FMS, IRS, and AHRS. These documents are distinct since they apply to different airplane models.

- Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the Bombardier CRJ Series Regional Jet Model CL–600–2B19 Airplane Flight Manual, CSP A–012,

Volume 1, Revision 71A, dated April 26, 2019.

- Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the Bombardier CRJ Series Regional Jet Model CL–600–2C10 Airplane Flight Manual, CSP B–012, Revision 26, dated March 1, 2019.
- Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the Bombardier CRJ Series Regional Jet Model CL–600–2C10 and CL–600–2C11 Airplane Flight Manual, CSP B–012, Revision 28, dated September 18, 2019.
- Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the Bombardier CRJ Series Regional Jet Model CL–600–2D15 and CL–600–2D24 Airplane Flight Manual, CSP C–012, Volume 1, Revision 21, dated March 29, 2019.
- Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the Bombardier CRJ Series Regional Jet Model CL–600–2E25 Airplane Flight Manual, CSP D–012, Revision 21, dated February 15, 2019.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing AFM to update the FMS, IRS, and AHRS limitations.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,072 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$91,120

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2020–0206; Product Identifier 2019–NM–202–AD.

(a) Comments Due Date

The FAA must receive comments by May 11, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that certain airplanes have outdated magnetic variation (MV) tables inside navigation systems. The FAA is issuing this AD to address outdated MV tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the Primary Flight Displays (PFDs) and Multi-Function Displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs (*e.g.,* outdated MV tables can lead to significantly inaccurate heading, course, and bearing calculations).

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the existing AFM to

incorporate the information specified in Section 02–09—Navigation System Limitations, of Chapter 2—LIMITATIONS, of the applicable Bombardier CRJ Series Regional Jet AFM specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *AFM Revisions*

Bombardier Airplane Model	AFM Title	AFM Revision
CL-600-2B19	Bombardier CRJ Series Regional Jet Model CL-600-2B19 AFM, CSP A-012, Volume 1	Revision 71A, dated April 26, 2019
CL-600-2C10	Bombardier CRJ Series Regional Jet Model CL-600-2C10 AFM, CSP B-012	Revision 26, dated March 1, 2019
CL-600-2C11	Bombardier CRJ Series Regional Jet Model CL-600-2C10 and CL-600-2C11 AFM, CSP B-012	Revision 28, dated September 18, 2019
CL-600-2D15 and CL-600-2D24	Bombardier CRJ Series Regional Jet Model CL-600-2D15 and CL-600-2D24 AFM, CSP C-012, Volume 1	Revision 21, dated March 29, 2019
CL-600-2E25	Bombardier CRJ Series Regional Jet Model CL-600-2E25 AFM, CSP D-012	Revision 21, dated February 15, 2019

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–40, dated November 1, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0206.

(2) For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–06294 Filed 3–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0067]

RIN 1625–AA00

Safety Zone; Lake of the Ozarks, Mile Marker .5 on the Main Channel of the Lake of the Ozarks Near Bagnel Dam, Lake Ozark, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Lake of the Ozarks. This action is necessary to provide for the safety of life on these navigable waters, during fireworks displays scheduled for May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 27, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0067 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On December 10, 2019, Celebration Cruises notified the Coast Guard that it will be conducting a firework display from 9:15 p.m. through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020. The fireworks are to be launched from a barge on Lake of the Ozarks at mile marker .5 on the main channel of Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 420-foot radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 420-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9:15 through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020. The safety zone would cover all navigable waters within 420 feet of a barge on Lake of the Ozarks at mile marker .5 on the main channel of Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO. The duration of the zone is intended to ensure the safety of persons, vessels, and these navigable waters before, during, and after the scheduled 9:30 p.m. to 10:00 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone, through Local Notices to Mariners (LNM).

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This action involves firework display that impact a half mile stretch of Lake of the Ozarks for one hour each.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting only one hour on 10 different days that would prohibit entry within 420 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0067 to read as follows:

§ 165.T08–0067 Safety Zone; Lake of the Ozarks, Mile .5 on the main channel of the Lake of the Ozarks near Bagnel Dam, Lake Ozark, MO

(a) *Location.* The following area is a safety zone: Lake of the Ozarks at mile marker .5 on the main channel of the Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO.

(b) *Period of enforcement.* This section is effective from 9:15 p.m. through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF radio Channel 16 or by telephone at 314–269–2332.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative while navigating in the regulated area.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Local Notices to Mariners (LNM).

Dated: March 6, 2020.

S.A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2020–06177 Filed 3–25–20; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 85, No. 59
Thursday, March 26, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 20, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 27, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Review of Major Changes in the Supplemental Nutrition Assistance Program (SNAP).

OMB Control Number: 0584–0579.

Summary of Collection: Section 11 of the Act (7 U.S.C. 2020) requires the United Stated Department of Agriculture (USDA), Food and Nutrition Service (FNS) to develop standards for identifying major changes in the operations of State agencies that administer SNAP. Section 272.15 of the regulations requires State agencies to notify the Department when planning to implement a major change in operations and State agencies to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, including access by vulnerable households.

Need and Use of the Information: FNS will use the information to for the purpose of administering an ongoing program. This information is also collect to allow FNS to properly monitor the program for compliance.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 13 out of 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 3,504.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–06260 Filed 3–25–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–20–SFH–0008]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named agency to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of the Single-Family Housing Guaranteed Loan Program (SFHGLP).

DATES: Comments on this notice must be received by May 26, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202) 720–2825. Email: *arlette.mussington@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for revision.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RHS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–20–SFH–0008 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the

docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Single Family Housing Guaranteed Loan Program.

OMB Number: 0575–0179.

Expiration Date of Approval: December 31, 2020.

Type of Request: Revision of a Previously Approved Information Collection.

Abstract: Under this program, loan guarantees are provided to participating lenders who make loans to income eligible borrowers in rural areas. The purpose of this program is to promote affordable housing for low- and moderate-income borrowers in rural America.

The revision resulted from an estimated increase of 1,714,757 responses and 681,089 burden hours since the last submission. Any change in hours is a result of increased program level funding and demand by the public. Also considered is a change in the average loan amount, additional lenders participating in the program, due to a change in the program funding level and a keener interest by industry partners. Backlogs in some States caused delays in processing lender requests that resulted in various turn-around times from state to state. Integration of the SFHGLP into the National model was necessary to provide lenders improved customer service, consistent turn times and policy interpretation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 49 minutes per response.

Respondents: Private sector lenders participating in the Rural Development Single Family Housing Guaranteed Loan Program.

Estimated Number of Respondents: 2,520.

Estimated Number of Responses per Respondent: 737.

Estimated Number of Responses: 1,766,094.

Estimated Total Annual Burden on Respondents: 1,361,748.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–06372 Filed 3–25–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–120]

Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 26, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2020, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigation of certain vertical shaft engines between 225cc and 999cc, and parts thereof from the People's Republic of China.[1] Currently, the preliminary determination is due no later than April 9, 2020.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1)(A) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if a petitioner makes a timely request for a postponement. Under 19 CFR 351.205(e), a petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[2]

On March 13, 2020, the Coalition of American Vertical Engine Producers and its individual members, the petitioner in this investigation, submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone fully the preliminary determination. The petitioner stated that the purpose of its request was to provide Commerce with sufficient time to receive and analyze the questionnaire responses of the mandatory respondents.[3]

In accordance with 19 CFR 351.205(e), the reason for requesting a postponement of the preliminary determination and the record does not present any compelling reasons to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to June 15, 2020.[4] Pursuant to section 705(a)(l) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: March 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–06331 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–847, A–533–893, A–475–840]

Forged Steel Fluid End Blocks From the Federal Republic of Germany, India and Italy: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 26, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482–4929 (Federal Republic of Germany (Germany)), Michael Romani at (202) 482–0198 (India), or Dmitry Vladimirov

[1] *See Certain Vertical Shaft Engines Between 223cc and 999cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 8835 (February 18, 2020).

[2] *See* 19 CFR 351.205(e).

[3] *See* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated March 13, 2020.

[4] In this case, 130 days after initiation falls on June 13, 2020, a Saturday. Where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

at (202) 482–0665 (Italy), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2020, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of forged steel fluid end blocks (fluid end blocks) from Germany, India, and Italy.[1] The deadline for the preliminary determinations is May 27, 2020.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 5, 2020, the petitioners[2] submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[3] The petitioners stated that they request postponement due to the complexity of the investigations and the amount of time that Commerce will need to conduct a complete and thorough analysis, including the issuance of supplemental questionnaires.[4] The petitioners request that Commerce fully extend the preliminary determinations by 50 days.

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than July 16, 2020. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 19, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–06335 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 2394 (January 15, 2020) (*Initiation Notice*).

[2] The petitioners are the FEB Fair Trade Coalition, Ellwood Group, and Finkl Steel.

[3] *See* Petitioners' Letter, ''Forged Steel Fluid End Blocks from Germany, India, and Italy: Request to Extend Preliminary Results,'' dated March 5, 2020.

[4] *Id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 200313–0079]

National Cybersecurity Center of Excellence (NCCoE) Validating the Integrity of Computing Devices Building Block

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Validating the Integrity of Computing Devices project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Validating the Integrity of Computing Devices project. Participation in the building block is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than April 27, 2020.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *supplychain-nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *https://nccoe.nist.gov/node/138.*

FOR FURTHER INFORMATION CONTACT: Nakia Grayson via email to *supplychain-nccoe@nist.gov*; by telephone 301–975–0200 or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Validating the Integrity of Computing Devices project are available at *https://www.nccoe.nist.gov/projects/building-blocks/supply-chain-assurance.*

SUPPLEMENTARY INFORMATION: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. When the building block has been completed, NIST will post a notice on the NCCoE Validating the Integrity of Computing Devices website at *https://www.nccoe.nist.gov/projects/building-blocks/supply-chain-assurance* announcing the completion of the building block and informing the public that it will no longer accept letters of interest for this building block.

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security

capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Validating the Integrity of Computing Devices project. The full building block can be viewed at: *https://www.nccoe.nist.gov/projects/building-blocks/supply-chain-assurance.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the building block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this building block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Building Block Objective: The objective of this project is to produce example implementations to demonstrate how organizations can verify that the internal components of their purchased computing devices are genuine and have not been altered during the manufacturing and distribution process. Additionally, this project will demonstrate how to inspect the processes that verify that the components in a computing device match the attributes and measurements declared by the manufacturer. This project is intended to help organizations decrease the risk of a compromise to products in a specific stage of their supply chain, which may result in risks to the end user. A detailed description of the Validating the Integrity of Computing Devices project is available at: *https://www.nccoe.nist.gov/projects/building-blocks/supply-chain-assurance.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the Validating the Computing Devices project description (for reference, please see the link in the Process section above) and include, but are not limited to:

- Computing devices, including laptops, servers, and mobile devices
- Configuration management software
  - vulnerability scanning
  - detection
  - patch management
  - version control
  - synchronization
  - firmware
- Asset inventory software
  - asset management
  - asset discovery
- Security information and event management (SIEM)
  - event detection
  - log management
  - exfiltration activity
  - unauthorized activity
  - anomalous activity
- Certificate authority

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 3 of the Validating the Integrity of Computing Devices project (for reference, please see the link in the PROCESS section above):

1. Use verifiable and authentic artifacts that manufacturers produce during the manufacturing and integration process.

2. Detect malicious component swaps of the computing device.

3. Manage the automation process when accepting the delivery of a computing device and throughout the operational lifecycle of the device.

4. Inspect computing devices to verify that the components in a delivered (or in-use) system computing device match the attributes and measurements declared by the manufacturer.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the Validating the Integrity of Computing Devices project for multiple sectors in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: FIPS 200, FIPS 201, SP 800–53, SP 800–147B, SP 800–155 and SP 800–161. Additional details about the Validating the Integrity of Computing Devices project are available at: *https://www.nccoe.nist.gov/projects/building-blocks/supply-chain-assurance.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Validating the Integrity of Computing Devices project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Validating the Integrity of Computing Devices project. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Validating the Integrity of Computing Devices' capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve supply chain assurance within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit

the NCCoE website *https://nccoe.nist.gov/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–06264 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA095]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a two-day webinar meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Due to federal and state travel restrictions and updated guidance from the Centers for Disease Control and Prevention regarding the new coronavirus, COVID–19, this meeting will be conducted entirely by webinar.

DATES: The webinar meeting will be held on Tuesday and Wednesday, April 14 and 15, 2020, beginning at 9 a.m. on April 14 and 8:30 a.m. on April 15.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://register.gotowebinar.com/register/8766043774885604099.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, April 14, 2020

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, staff from the Atlantic States Marine Fisheries Commission (ASMFC), and representatives from NOAA General Counsel, NOAA's Office of Law Enforcement, the U.S. Coast Guard, the Northeast Trawl Advisory Panel, and the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas. The Council then will receive a presentation on the NEFSC's State of the Ecosystem 2020 Report for New England, which will be followed by recommendations from the Council's Scientific and Statistical Committee on the report. The Ecosystem-Based Fishery Management (EBFM) Committee will be up next to provide an update on work related to stakeholder engagement and public information workshops focusing on EBFM and the approach used for the Council's example Fishery Ecosystem Plan (eFEP) for Georges Bank. Then, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://www.nefmc.org/calendar/april-2020-council-meeting.*

Following the lunch break, the Council will receive an update from staff at the Stellwagen Bank National Marine Sanctuary on sanctuary activities, as well as a presentation on the new NOAA Condition Report, which is triggering a review of the sanctuary's management plan. Next, the Council will receive a NEFSC report on the March 9–12, 2020 Red Hake Stock Structure Research Track Assessment peer review meeting and go directly into its Small-Mesh Multispecies (Whiting) Report, which will focus on updates to an action being considered to rebuild southern red hake. Finally, the Council will receive the Atlantic Herring Committee Report covering: (1) An update on Framework Adjustment 7 to the Atlantic Herring Fishery Management Plan (FMP), which is being developed to protect spawning herring on Georges Bank; (2) discussion on whether the Council should request that NOAA Fisheries send a letter to ASMFC outlining the differences between Council and ASMFC authorities related to Atlantic herring management; and (3) an update on Framework Adjustment 8, which includes fishing year 2021–23 specifications and possible adjustment of herring measures that potentially inhibit the Atlantic mackerel fishery from achieving optimum yield. The Council then will adjourn the formal meeting for the day and go into a closed session to discuss personnel issues.

Wednesday, April 15, 2020

The Council will begin the day with a briefing on NMFS's decision to reinitiate consultation on the 2012 Atlantic Sea Scallop Biological Opinion due to the scallop fishery exceeding its incidental take statement for turtles. The Scallop Committee Report with follow. The Council will approve the range of alternatives for Scallop Amendment 21, which is being developed to address: (1) Northern Gulf of Maine Management Area issues, (2) the Limited Access General Category (LAGC) possession limit, and (3) individual fishing quota (IFQ) transfers. Then, the Council will be briefed by GARFO on issues related to the Atlantic Large Whale Take Reduction Team, the North Atlantic Right Whale Biological Opinion, and the timeline for upcoming action. After that, the Council will discuss and initiate a framework action to require recreational charter/party vessels to submit required vessel trip reports (VTRs) electronically as eVTRs for all fisheries managed by the New England Council.

Following the lunch break, the Council will be presented with and discuss the Groundfish Catch Share Program Review Final Report. Then, the Council will bring up ''other business'' and take a short break if time allows. After that, the Council will conduct a formal public hearing on Groundfish Monitoring Amendment 23, which is under development to improve catch reporting in the commercial groundfish fishery. At the conclusion of the hearing, the Council will close out the meeting.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is being conducted entirely by webinar. Requests for

auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–06263 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request; Atlantic Mackerel, Squid and Butterfish Amendment 14 Data Collection

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Mackerel, Squid and Butterfish Amendment 14 Data Collection.

OMB Control Number: 0648–0679.

Form Number(s): None.

Type of Request: Regular (Revision to an approved information collection).

Number of Respondents: 10,035.

Average Hours per Response: Pre-trip notification to observer program/Change from call to web based system, 5 minutes; Trip Cancellation notification to observer program/change from call to web-based, 1 minute; Released Catch Affidavit, 5 minutes; and Vessel Permit Swap Form, 5 minutes.

Burden Hours: 765.84.

Needs and Uses: The information collections under OMB Control No. 0648–0679, are used by several offices of NMFS, the United States Coast Guard, the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, state fishery management agencies, academic institutions, and other fishery research and management organizations to evaluate current management programs and future management proposals. In most cases, aggregated summaries are made available, but for law enforcement, mailings, or resource allocation problems, individual permit information is often required. All information collections are necessary for improved monitoring of the Atlantic mackerel, Squid, and Butterfish fisheries. There are changes to this collection due to the duplication of collection accounting of the Northeast region permit family of forms, 0648–0202, and those information collections are being removed from this OMB Control Number. These information collection include: Any forms related to Vessel Monitoring Systems (VMS); VMS Power Down Exemption; Exemption Programs Authorized for Federal Permit Holders, such as transfers at sea for Atlantic mackerel; permit applications; replacement/upgrades; and confirmation of permit history. The collection accounting for VTR submission has been added to the 0679–0212 collection. There are no changes to the information collections other than updated permit holder numbers.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: On occasion, dependent on fishing activity.

Respondent's Obligation: Mandatory.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (MSA).

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0679.

Dated: March 23, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–06305 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request; West Coast Swordfish Fishery Cost and Earnings Survey

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Swordfish Fishery Cost and Earnings Survey.

OMB Control Number: 0648–0751.

Form Number(s): None.

Type of Request: Regular submission (extension of an existing collection).

Number of Respondents: 17.

Average Hours per Response: 1.

Burden Hours: 17.

Needs and Uses: NOAA Fisheries periodically collects cost and earnings data from commercial fisheries participants to support analysis needed to estimate the economic impacts of regulation on fishery participants. Given the absence of mandatory cost reporting requirements, the survey will be used inform economic analyses in technical reports such as Regulatory Impact Review and Regulatory Flexibility Analysis. Survey results will assist policy makers in efforts to design and improve policy to positively affect outcomes in the commercial fishing industry, and increase public benefits. The survey will further assist NOAA Fisheries in developing a more comprehensive understanding of the economics of the U.S. commercial fishing industry.

Affected Public: Participants in the West Coast Commercial Swordfish Fishery including harvesters, spotter plane pilots, and processors.

Frequency: Once every three years.

Respondent's Obligation: Voluntary.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (MSA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), and Executive Order 12866 (E.O. 12866).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0751.

Dated: March 23, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–06304 Filed 3–25–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting; Withdrawal

AGENCY: U.S. Air Force Scientific Advisory Board, Department of the Air Force, DoD.

ACTION: Notice of withdrawal.

SUMMARY: The previous Air Force Scientific Advisory Board **Federal Register** Notice, Vol. 85, No. 46, published on Monday March 9, 2020, is hereby withdrawn. The United States Air Force Scientific Advisory Board Meeting to be held on April 2, 2020 is cancelled. Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer for the U.S. Air Force Scientific Advisory Board was unable to provide public notification required by concerning the cancellation of the previously noticed meeting of the U.S. Air Force Scientific Advisory Board for April 2, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Evan Buschmann, (240) 612–5503 (Voice), 703–693–5643 (Facsimile), *evan.g.buschmann.civ@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–06282 Filed 3–25–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0033]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of a modified System of Records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying the DoD Personnel Accountability and Assessment System, DPR 39 DoD, for the purpose of more clearly covering records that may be maintained in response to public health and safety events or other similar emergencies such as Coronavirus Disease 2019 (COVID–19). The DoD blanket routine uses were removed and replaced with specific routine uses that explain the entities to which disclosures would be made.

DATES: This System of Records Modification is effective upon publication; however comments on the Routine Uses will be accepted on or before April 27, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, Defense Privacy, Civil Liberties and Transparency Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700, or by phone at (703) 571–0070.

SUPPLEMENTARY INFORMATION: In quick response to the changing situation regarding COVID–19, the OSD is modifying this System of Records Notice to include the necessary information needed in order to decrease the community spread of this disease within the DoD community. The OSD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act, as amended, were submitted on March 20, 2020, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: March 23, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DoD Personnel Accountability and Assessment System, DPR 39 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Decentralized locations include the DoD Components staff and field operating agencies, major commands, installations, and activities.

SYSTEM MANAGER(S):

Senior Program Manager for Casualty and Mortuary Affairs, Office of the Under Secretary of Defense (Personnel & Readiness), Deputy Under Secretary of Defense for Military Community and Family Policy, 4000 Defense Pentagon, Washington DC 20301–4000; DoD Components including the Office of the Secretary of Defense, Departments of the Army, Air Force, and Navy and staffs, field operating agencies, major commands, installations, and activities.

The Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice have been delegated to the employing DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 7013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Navy; 10 U.S.C. 9013, Secretary of the Air Force; 10 U.S.C. 2672, Protection of Buildings, Grounds, Property, and Persons; DoD Instruction 3001.02, Personnel Accountability in Conjunction with Natural or Manmade Disasters; DoD Instruction 6200.03, Public Health Emergency Management (PHEM) Within the DoD; DoD Instruction 6055.17, DoD Emergency Management (EM) Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

To accomplish personnel accountability for and status of DoD-affiliated personnel in a natural or man-made disaster or public health emergency, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction, pandemics or major public health outbreaks, and similar crises. This system will document the individuals' check-in data or other information that is self-reported or provided by third parties (*e.g.,* supervisors or commanders) if necessary to maintain accountability or inform agency responses to emergencies, including the safety and protection of the workforce. The DoD Components may also collect information about DoD personnel and their dependents for needs and status assessments as a result of the natural or man-made disaster, public health emergency, similar crisis, or when directed by the Secretary of Defense. The DoD Components may also use accountability data for accountability and assessment reporting exercises.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD-affiliated personnel to include: Military Service members (active duty, Guard/Reserve and the Coast Guard personnel when operating as a Military Service with the Navy), civilian employees (including non-appropriated fund employees), dependents and family members of the above, and contractors or other individuals working at or requiring access to DoD facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject individual's full name, Social Security Number (SSN), DoD Identification Number (DoD ID Number), DoD affiliation, date of birth, duty station address and telephone numbers, home and email addresses, and telephone numbers (to include cell number). Emergency Data information may include spouse's name and address; children's names, dates of birth, address and telephone number; parents' names, addresses and telephone numbers; or emergency contact's name and address. The DoD Components may request information to assess the needs and status of affiliated personnel. Such information may include a needs and status assessment to help determine any specific emergent needs; the date of the assessment; the type of event and category classification; a Federal Emergency Management Agency (FEMA) number, if issued; and other information about individuals if necessary to maintain personnel accountability or inform agency responses to emergencies, such as travel and health-related information covered under the Privacy Act. Personal information maintained will be the minimum necessary in order to accomplish the accountability and/or emergency response mission in accordance with the Privacy Act of 1974 and DoDI 5400.11, consistent with applicable law.

RECORD SOURCE CATEGORIES:

Individuals, supervisors or commanders, other Federal Agencies, and Defense Manpower Data Center (DEERS database).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this System of Records.

b. To the Office of Personnel Management (OPM) for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

c. To State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, or 5520 and only to those state and local taxing authorities for which an employee or military member is or was subject to tax, regardless of whether tax is or was withheld. The information to be disclosed is information normally contained in Internal Revenue Service (IRS) Form W–2.

d. To any person, organization or governmental entity (*e.g.,* other Federal, State, territorial, local, or foreign, or international governmental agencies or entities, first responders, American Red Cross, etc.), as is necessary and relevant to notify them of, respond to, or guard against a serious and imminent terrorist or homeland security threat, natural or manmade disaster, public health emergency, or other similar crisis, including for the purpose of enabling emergency service personnel to locate an individual.

e. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

f. To the news media and the public unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

g. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

h. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

i. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

j. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C 2904 and 2906.

k. To a member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

l. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

m. To another Federal agency or Federal entity, when the DoD determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a

suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in hard copy and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Individual's name, DoD ID Number, Social Security Number (SSN), or date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Military Departments, Joint Chiefs of Staff and OSD all retain in accordance with their individual Records and Information Management retention schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DoD Components will ensure that paper and electronic records collected and used are maintained in controlled areas accessible only to authorized personnel. Physical security differs from site to site, but the automated records must be maintained in controlled areas accessible only by authorized personnel. Access to computerized data is restricted by use of common access cards (CACs) and passwords. These are ''For Official Use Only'' records and are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this System of Records should address written inquiries to their employing DoD Component. The request should include the individual's full name, DoD ID Number, SSN, home address, and be signed.

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this System of Records contains information about themselves should address written inquiries to their employing DoD Component. The request should include the individual's full name, DoD ID Number, SSN, home address, and be signed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

March 24, 2010, 75 FR 14141.

[FR Doc. 2020–06344 Filed 3–25–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[COE–2020–0003]

Guidance To Establish Policies for the Agency Levee Safety Program Entitled Engineer Circular 1165–2–218

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice; extension of public comment period.

SUMMARY: In the February 25, 2020 issue of the **Federal Register**, the U.S. Army Corps of Engineers (USACE) issued a notice announcing the availability of its draft agency guidance entitled, Engineer Circular 1165–2–218: U.S. Army Corps of Engineers Levee Safety Program, for comment. In that notice, USACE stated that written comments must be submitted on or before April 27, 2020. It was the intent of USACE to host five in-person public sessions to provide additional opportunities to exchange information related to the draft Engineer Circular prior to the conclusion of the open comment period. Due to ongoing concerns related to coronavirus disease 2019 (COVID–19), USACE has postponed the in-person public sessions until such a time they can be safely rescheduled or an alternative plan for virtual information exchange can be implemented. USACE recognizes that feedback from the public and our partners is key to the success of the USACE Levee Safety Program, and provides opportunity to build trusting and transparent relationships. As a result, USACE is extending the public comment period on the draft Engineer Circular until July 27, 2020. The draft Engineer Circular is available for review on the USACE Levee Safety Program website (*https://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/*) and at (*http://www.regulations.gov*) reference docket number COE–2020–0003.

DATES: USACE is extending the comment period for the notice published in the February 25, 2020, issue of the **Federal Register** (85 FR 10658) to July 27, 2020.

ADDRESSES: USACE, 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti at 202–761–4649, email *EC218@usace.army.mil* (mailto: *EC218@usace.army.mil*) or visit *http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/* (*http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/*).

SUPPLEMENTARY INFORMATION: None.

Dated: March 20, 2020.

R.D. James,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 2020–06364 Filed 3–25–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Marine Corps University Board of Visitors; Cancellation

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting; cancellation.

SUMMARY: On Friday, March 13, 2020, the Department of the Navy published a notice announcing a meeting of the Marine Corps University Board of Visitors that was to take place on Thursday, April 2, 2020, and Friday, April 3, 2020. Due to ongoing COVID–19 concerns, the Department of the Navy is cancelling this meeting.

DATES: The meeting that was open to the public, Thursday, April 2, 2020, from 9:00 a.m. to 5:00 p.m., and Friday, April 3, 2020, from 9:45 a.m. to 11:00 a.m. has been cancelled.

FOR FURTHER INFORMATION CONTACT: Alternate Designated Federal Officer Dr. Kimberly Florich, Faculty Development and Outreach, *kimberly.florich@usmcu.edu.* 703–432–4837, 2076 South St., Quantico, VA 22134.

SUPPLEMENTARY INFORMATION: The meeting notice published in the **Federal Register** on Friday March 13, 2020 (85 FR 14657).

Due to circumstances beyond the control of the Department of Defense, the Designated Federal Officer for the Marine Corps University Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the cancellation of the previously noticed meeting for April 2 through 3, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b),

waives the 15-calendar day notification requirement.

Dated: March 18, 2020.

K.K. Ramsey,

Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–06317 Filed 3–25–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1434–004.

Applicants: ISO New England Inc., Emera Maine.

Description: Compliance filing: Emera Maine; Joint Offer of Settlement Re: Bangor Hydro District Charges to be effective N/A.

Filed Date: 3/19/20.

Accession Number: 20200319–5013.

Comments Due: 5 p.m. ET 4/9/20.

Docket Numbers: ER19–1890–001.

Applicants: MATL LLP.

Description: Compliance filing: Order No. 845 Compliance Filing (Docket No. ER19–1890–001) to be effective 5/22/2019.

Filed Date: 3/20/20.

Accession Number: 20200320–5046.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–660–000.

Applicants: Bolt Energy Marketing, LLC.

Description: Report Filing: Response to Request for Additional Information to be effective N/A.

Filed Date: 3/19/20.

Accession Number: 20200319–5145.

Comments Due: 5 p.m. ET 4/9/20.

Docket Numbers: ER20–715–001.

Applicants: Central Hudson Gas & Electric Corporation, New York Independent System Operator, Inc.

Description: Tariff Amendment: Central Hudson response to FERC deficiency letter to be effective 5/20/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5110.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1351–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3641 Haystack Wind Project, LLC GIA to be effective 3/12/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5016.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1352–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Cost Reimbursement Agreement (SA 2528) Niagara Mohawk & Lake Placid Village to be effective 2/21/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5044.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1353–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo–HLYCRS–O&M–0.1.0-Filing to be effective 3/21/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5049.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1355–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–03–20_SA 3452 Entergy Arkansas-Helena Harbor Solar Park GIA (J663) to be effective 3/6/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5069.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1356–000.

Applicants: Mid-Atlantic Interstate Transmission, LL, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits Operating and Interconnection Agreement, SA No. 4578 with Penelec to be effective 5/19/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5103.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1357–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–03–20_SA 3445 MidAmerican Energy Company-Plymouth Wind Energy GIA (J748) to be effective 3/6/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5104.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1358–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5605; Queue No. AC1–222/AD1–055 to be effective 2/24/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5108.

Comments Due: 5 p.m. ET 4/10/20.

Docket Numbers: ER20–1359–000.

Applicants: Scylla Energy LLC.

Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 3/23/2020.

Filed Date: 3/20/20.

Accession Number: 20200320–5124.

Comments Due: 5 p.m. ET 4/10/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06319 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–50–000; CP20–51–000]

Tennessee Gas Pipeline Company, LLC, Southern Natural Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Evangeline Pass Expansion Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Evangeline Pass Expansion Project involving construction and operation of facilities by Tennessee Gas Pipeline Company, LLC (Tennessee) and Southern Natural Gas Company, LLC (SNG) in Clarke and Smith Counties, Mississippi and St. Bernard and Plaquemines Parishes, Louisiana.[1] The Commission will use this EA in its decision-making process to determine

[1] In addition, Southern is proposing to make modification to auxiliary facilities pursuant to Section 2.55(a) of the Commission's regulations in Jasper, Simpson, Jefferson Davis, Lawrence, and Walthall Counties, Mississippi and Washington, St. Tammany, and Orleans Parishes, Louisiana.

whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 20, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on February 7, 2020, you will need to file those comments in Docket No. CP20–50–000 or CP20–51–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Tennessee and SNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP20–50–000 or CP20–51–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[2]

Summary of the Proposed Project

Tennessee proposes to construct and operate approximately 13 miles total of looping [3] pipeline and a new compressor station in St. Bernard and Plaquemines Parishes Louisiana. SNG proposes to construct a new compressor station and three new meter stations in Clarke and Smith Counties, Mississippi and St. Bernard Parish, Louisiana.

Tennessee has entered into an agreement with SNG to acquire leased capacity on SNG's system to enable Tennessee to provide firm transportation service up to 1,100 million standard cubic feet of natural gas per day to the recently approved Venture Global Gator Express Pipeline interconnect for feed gas for the Plaquemines LNG Terminal in Plaquemines Parish, Louisiana.

The Evangeline Pass Expansion Project would consist of the following facilities:

Tennessee

- Construction of about 9 miles of 36-inch-diameter looping pipeline in St. Bernard Parish, Louisiana (Yscloskey Toca Lateral Loop);
- construction of about 4 miles of 36-inch-diameter looping pipeline in Plaquemines Parish, Louisiana (Grand Bayou Loop);
- construction of a new 23,470 horsepower (hp) compressor station along Tennessee's existing 500 line in St. Bernard Parish, Louisiana (Compressor Station 529);
- replacement of two 10,410 hp units (like-for-like) under section 2.55(b) at existing Compressor Station 527 in Plaquemines Parish, Louisiana;

SNG

- Construction of a new 22,220 hp compressor station in Clarke County, Mississippi (Rose Hill Compressor Station);
- construction of three new meter stations in Clarke and Smith Counties,

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

Mississippi and St. Bernard Parish, Louisiana (Rose Hill and Midcontinent Express Pipeline Receipt Meter Stations, and Toca Delivery Meter Station); and

- construction and/or modification of certain system auxiliary and appurtenant facilities under section 2.55(a) at existing compressor stations and along the pipeline corridor in Clarke, Smith, Jasper, Simpson, Jefferson Davis, Lawrence, and Walthall Counties, Mississippi and St. Bernard, Washington, St. Tammany, and Orleans Parishes, Louisiana.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would disturb a total of about 535 acres of land for the aboveground facilities and the pipelines (including activities proposed to be conducted under section 2.55). Following construction, a total of about 133 acres of new permanent right-of-way would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The proposed looping pipeline routes would parallel existing pipelines, and to the extent that it is practicable, would be located within and adjacent to the existing rights-of-way. The new Compressor Station 529 would be located at an existing abandoned compressor station site owned by Tennessee, while SNG's new Rose Hill Compressor Station would be located within a forested timber property. Tennessee would use four contractor yards (about 27 acres total) to facilitate construction (Toca Yard, Bayou Road Yard, State Road LA–46 Yard, and Yscloskey Yard).

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [4] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee and SNG. This preliminary list of issues may change based on your comments and our analysis.

- Wetlands and waterbodies;
- fisheries and aquatic species;
- hunting and fishing;
- property values; and
- air and noise.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–50 or CP20–51). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[6] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: March 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06333 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–87–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on March 11, 2020, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and ARN's blanket certificate issued in Docket No. CP82–480–000. ANR request authorization to increase the certificated horsepower (HP) at the Grand Chenier Compressor Station located in Cameron Parish, Louisiana (Grand Chenier Horsepower Increase Project). The project will allow the increase of the certificated ISO rated HP from 9,700 to 10,800. ANR avers that there are no additional facility installation, or modifications to the previously installed facilities required to facilitate the HP increase, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this prior notice request should be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, Phone: (832) 320–5209, Email: *sorana_linder@tcenergy.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: March 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06330 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–21–000]

Port Arthur Pipeline, LLC; Notice of Schedule for Environmental Review of the Louisiana Connector Amendment Project

On December 9, 2019, Port Arthur Pipeline, LLC filed an application in Docket No. CP20–21–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Port Arthur Louisiana Connector Amendment Project (Project), and consists of relocating a compressor station site previously approved in the Louisiana Connector Project (Docket No. CP18–7–000) in Allen Parish, Louisiana. Port Arthur Pipeline, LLC, currently proposes to construct the compressor station, along with associated interconnect and metering facilities, in Beauregard Parish, Louisiana. The Project would also increase the design capacity of the compressor station from 89,900 horsepower (hp) to 93,880 hp, and increase the capacity of the previously certificated Louisiana Connector Project from 1.98 billion standard cubic feet per day of natural gas to 2.05 billion standard cubic feet per day of natural gas deliverable to the Port Arthur Liquefaction Project, previously approved by the Commission in Docket No. CP17–20–000.

On December 20, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—May 8, 2020
90-day Federal Authorization Decision Deadline—August 6, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

As part of the Project, Port Arthur Pipeline, LLC would:

- Relocate the previously authorized compressor station consisting of four Solar Titan 130E gas turbine driven compressors in Allen Parish from milepost (MP) 96.1 to MP 72.3 in Beauregard Parish, and increase horsepower from 89,900 hp to 93,880 hp;
- relocate an interconnect with Texas Eastern Transmission Company from MP 96.1 to MP 72.3;
- relocate pig launcher/receiver facilities from MP 96.1 to MP 72.3;
- construct three new pipeline interconnections with Cameron Intrastate Pipeline, Transcontinental Gas Pipeline, and Louisiana Storage at MP 72.3; and
- construct one new mainline block valve at MP 72.3, resulting in a total of 10 mainline valves on the Louisiana Connector Project.

Background

On February 5, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Louisiana Connector Amendment Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from Louisiana Department of Wildlife and Fisheries and eight landowners. The primary issues raised by the commentors are alternative compressor station locations, noise, air quality, visual impacts, and impacts on property values. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–21), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06329 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2880–015]

Cherokee Falls Hydroelectric Project, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2880–015.

c. *Date filed:* July 31, 2019.

d. *Applicant:* Cherokee Falls Hydroelectric Project, LLC.

e. *Name of Project:* Cherokee Falls Hydroelectric Project (Cherokee Falls Project).

f. *Location:* The existing project is located on the Broad River, in Cherokee County, South Carolina. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Beth E. Harris, Southwest Regional Engineer, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone (864) 846–0042 ext. 100; *Beth.Harris@Enel.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093, or at *michael.spencer@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* Sixty (60) days from the issuance date of this notice; reply comments are due one hundred five (105) days from the issuance date of this notice.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2880–015.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* Cherokee Falls Project consists of: (1) A 1,819-foot-long granite masonry dam with a 1,701-foot-long spillway and 4-foot-high flashboards; (2) ten low level outlet pipes along the middle portion of dam, four of which are at least partially open and used to provide a continuous minimum flow to the bypassed reach; (3) a reservoir with a surface area of 83 acres and a storage capacity of 140 acre-feet; (4) a trash rack intake with 3.5 inch spacing between the bars; (5) a 130-foot-long, 40-foot-wide powerhouse containing one generating unit with a capacity of 4,140 kilowatts and an annual generation of 9,354.9 megawatt-hours; (6) a 150-foot-long tailrace; (7) 93-foot-long generator lines leading to three 500 kilovolt transformers and (8) a 200-foot-long transmission line to a point of interconnection with the grid.

The project is operated in a run-of-river mode with a continuous, minimum flow of 97 to 270 cubic feet per second (cfs) supplied to the bypassed reach. The current license requires a minimum flow of 65 cfs. Project operation starts when inflows exceed the sum of the minimum hydraulic capacity of the turbine (600 cfs) and the minimum flow supplied to the bypassed reach. All flows greater than the sum of the maximum hydraulic capacity of the turbine (3,100 cfs) and the bypassed reach minimum flow, are passed over the spillway.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	April 2020.
Commission issues Environmental Assessment (EA).	December 2020.
Comments on EA	January 2021.

o. Final amendments to the application must be filed with the Commission no later than thirty (30) days from the issuance date of this notice.

Dated: March 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06328 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–25–000]

Tri-State Generation and Transmission Association, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On March 20, 2020, the Commission issued an order in Docket No. EL20–25–000 pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether Tri-State Generation and Transmission Association, Inc.'s proposed Open Access Transmission Tariff is unjust, unreasonable, unduly discriminatory or preferential. *Tri-State Generation and Transmission Association, Inc.,* 170 FERC 61,222 (2020).

The refund effective date in Docket No. EL20–25–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–25–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: March 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06322 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–26–000]

Tri-State Generation and Transmission Association, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On March 20, 2020, the Commission issued an order in Docket No. EL20–26–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether Tri-State Generation and Transmission Association, Inc.'s proposed Stated Rate Tariff and Wholesale Service Contracts are unjust, unreasonable unduly discriminatory, or preferential. *Tri-State Generation and Transmission Association, Inc.,* 170 FERC 61,221 (2020).

The refund effective date in Docket No. EL20–26–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–26–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: March 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06323 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–661–000.

Applicants: Enable Gas Transmission, LLC.

Description: Annual Revenue Crediting Filing of Enable Gas Transmission, LLC under RP20–661.

Filed Date: 3/17/20.

Accession Number: 20200317–5207.

Comments Due: 5 p.m. ET 3/30/20.

Docket Numbers: RP18–940–007.

Applicants: Empire Pipeline, Inc.

Description: Compliance filing Metadata Corrective Tariff Record Filing to be effective 1/1/2019.

Filed Date: 3/18/20.

Accession Number: 20200318–5111.

Comments Due: 5 p.m. ET 3/30/20.

Docket Numbers: RP20–663–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Sempra Gas & Power Marketing, LLC to be effective 4/1/2020.

Filed Date: 3/19/20.

Accession Number: 20200319–5047.

Comments Due: 5 p.m. ET 3/31/20.

Docket Numbers: RP20–664–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing 2020 Annual Penalty Revenue Crediting Report.

Filed Date: 3/19/20.

Accession Number: 20200319–5051.

Comments Due: 5 p.m. ET 3/31/20.

Docket Numbers: RP20–665–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Name Change Cleanup—Colonial to Boston Gas to be effective 4/20/2020.

Filed Date: 3/19/20.

Accession Number: 20200319–5052.

Comments Due: 5 p.m. ET 3/31/20.

Docket Numbers: RP20–666–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Mar2020 Non-conforming Agrmt Cleanup Filing, eff 4–23–2020 to be effective 4/23/2020.

Filed Date: 3/19/20.

Accession Number: 20200319–5120.

Comments Due: 5 p.m. ET 3/31/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06320 Filed 3–25–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2016–0465, FRL–10006–78–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Requirements for Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Information Requirements for Boilers and Industrial Furnaces (EPA ICR No. 1361.18, OMB Control No. 2050–0073) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2021. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 26, 2020.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2016–0465, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Resource Conservation and Recovery (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA regulates the burning of hazardous waste in boilers, incinerators, and industrial furnaces (BIFs) under 40 CFR parts 63, 264, 265, 266 and 270. This ICR describes the paperwork requirements that apply to the owners and operators of BIFs. This includes the general facility requirements at 40 CFR parts 264 and 265, subparts B thru H; the requirements applicable to BIF units at 40 CFR part 266; and the RCRA Part B permit application and modification requirements at 40 CFR part 270.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: Mandatory (per 40 CFR 264, 265, and 270).

Estimated number of respondents: 105.

Frequency of response: On occasion.

Total estimated burden: 271,137 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $37,253,148 (per year), includes $17,592,543 annualized labor, $9,089,769 annualized capital/startup, and $10,570,836 operation & maintenance costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: March 19, 2020.

Donna Salyer,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2020–06275 Filed 3–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0690, FRL–10006–69–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), General Hazardous Waste Facility (EPA ICR No. 1571.13, OMB Control No. 2050–0120) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2021. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 26, 2020.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0690, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires the EPA to develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in 40 CFR parts 264 and 265. The collection of this information enables the EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA.

Form Numbers: None.

Respondents/affected entities: Business and other for-profit, as well as State, Local, and Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA section 3004).

Estimated number of respondents: 1,466.

Frequency of response: On occasion.

Total estimated burden: 583,287 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $38,918,717 (per year), includes $408,235 annualized capital or operation & maintenance costs and $38,510,482 annualized labor costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: March 19, 2020.

Donna Salyer,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2020–06274 Filed 3–25–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16592]

Information Collection Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments and recommendations for the information collection should be submitted on or before April 27, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 35 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the Commission's submission to OMB will be displayed.

OMB Control Number: 3060–XXXX.

Title: 3.7 GHz Band Space Station Operator Accelerated Relocation Elections and Transition Plans; 3.7 GHz Band Incumbent Earth Station Lump Sum Payment Elections.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents and Responses: 3,010 respondents and 3,010 responses.

Estimated Time per Response: 16 hours per eligible space station accelerated relocation election; 80–600 hours per eligible space station transition plan; 32 hours per incumbent earth station lump sum payment election.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Estimated Total Annual Burden: 109,680 hours.

Total Annual Costs: $900,000.

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available, however, to the extent information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information. See 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Federal Communications Commission (Commission) adopted a Report and Order, FCC 20–22, (*3.7 GHz Report and Order*) in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-Band. The 3.7 GHz-4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service.

Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the

United States. The *3.7 GHz Report and Order* calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and making the lower 280 megahertz (3.7–3.98 GHz) available for flexible-use throughout the contiguous United States through a Commission-administered public auction of overlay licenses that is scheduled to occur later this year, with the 20 megahertz from 3.98–4.0 GHz reserved as a guard band.

The Commission adopted a robust transition schedule to achieve an expeditious relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. The *3.7 GHz Report and Order* establishes a deadline of December 5, 2025, for full relocation to ensure that all FSS operations are cleared in a timely manner, but provides an opportunity for accelerated clearing of the band by allowing incumbent space station operators, as defined in the *3.7 GHz Report and Order,* to commit to voluntarily relocate on a two-phased accelerated schedule (with additional obligations and incentives for such operators), with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The Commission concluded in the *3.7 GHz Report and Order* that, before the public auction of overlay licenses commences, it is appropriate for potential bidders to know when they will get access to the spectrum in the 3.7–3.98 GHz band that is currently occupied by incumbent FSS space station operators and earth stations, as defined in the *3.7 GHz Report and Order,* and to have an estimate of how much they may be required to pay for incumbent relocation costs and accelerated relocation payments should they become overlay licensees, as overlay licensees are required to pay for the reasonable relocation costs of incumbent space station and incumbent earth station operators that are required to clear the lower portion of the band.

Under this new information collection, the Commission will collect information that will be used by the Commission to determine when, how, and at what cost existing operations in the lower portion of the 3.7–4.2 GHz band will be relocated to the upper portion of the band. Specifically, the Commission collect the following information from incumbents as adopted in the *3.7 GHz Report and Order:*

Accelerated Relocation Elections

The Commission concluded in the *3.7 GHz Report and Order* that overlay licensees would only value accelerated relocation if a significant majority of incumbents are cleared in a timely manner, and therefore determined that at least 80% of accelerated relocation payments must be accepted in order for the Commission to accept accelerated elections and require overlay licensees to pay accelerated relocation payments. The *3.7 GHz Report and Order* calls for an eligible space station operator, as defined in the *3.7 GHz Report and Order,* that chooses to commit to clear on the accelerated schedule in exchange for accelerated relocation payments to submit a written, public, irrevocable accelerated relocation election with the Commission by May 29, 2020, to permit the Commission to determine whether there are sufficient accelerated relocation elections to trigger early relocation and in turn provide bidders with adequate certainty regarding the clearing date and payment obligations associated with each license well in advance of the auction.

Transition Plans

The *3.7 GHz Report and Order* requires each eligible space station operator to submit to the Commission by June 12, 2020, and make available for public review, a detailed transition plan describing the necessary steps and estimated costs for the eligible space station operator to complete the transition of existing operations in the lower portion of the 3.7–4.2 GHz band to the upper 200 megahertz of the band and its individual timeline for doing so consistent with the regular relocation deadline or by the accelerated relocation deadlines. An eligible space station operator that elects to receive accelerated relocation payments is responsible for relocating all of its associated incumbent earth stations and must outline the details of such relocation in the transition plan (unless an incumbent earth station owner elects to receive a lump sum payment and assumes responsibility for transitioning its own earth stations). Similarly, an incumbent space station operator that does not elect to receive accelerated relocation payments but nevertheless plans to assume responsibility for relocating its own associated incumbent earth stations must make that clear in its transition plan.

Incumbent Earth Station Lump Sum Payment Elections

The *3.7 GHz Report and Order* provides an incumbent earth station operator with the option of accepting reimbursement payments for its reasonable relocation costs for the transition, or opting out of the formal relocation process and accepting a lump sum reimbursement payment for all of its incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations in lieu of actual relocation costs. The *3.7 GHz Report and Order* directs the Wireless Telecommunications Bureau to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments and requires that no later than 30 days after this announcement, an incumbent earth station operator that wishes to receive a lump sum payment make an irrevocable lump sum payment election that will apply to all of its earth stations in the contiguous United States.

This information collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing of the lower portion of the band, so that this spectrum can be auctioned for flexible-use service licenses.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–06351 Filed 3–25–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201336.

Agreement Name: Crowley/King Ocean Space Charter Agreement.

Parties: Crowley Caribbean Services LLC and King Ocean Services Limited, Inc.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes King Ocean to charter space to Crowley

in the trade between the U.S. East Coast on the one hand and Grenada and St. Vincent on the other hand.

Proposed Effective Date: 4/27/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27482.

Agreement No.: 201337.

Agreement Name: Glovis/CSAV East Coast United States to South America West Coast Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Glovis to charter space to CSAV in the trade between ports on the East Coast of the United States and ports on the West Coast of South America.

Proposed Effective Date: 3/17/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27483.

Agreement No.: 012439–005.

Agreement Name: THE Alliance Agreement.

Parties: Hapag-Lloyd AG and Hapag-Lloyd USA, LLC (acting as a single party); Hyundai Merchant Marine Co., Ltd.; Ocean Network Express Pte. Ltd.; and Yang Ming Marine Transport Corporation and Yang Ming (Singapore) Pte. Ltd. and Yang Ming (UK) Ltd. (acting as a single party).

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The amendment revises certain provisions in Appendix B of the Agreement relating to the Contingency Fund to allow the Parties increased flexibility with respect to the manner in which they each satisfy their Contingency Contribution requirements. In addition, the definition of Contingency Contribution has been revised to reflect each Party's current Contingency Contribution obligations.

Proposed Effective Date: 5/3/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1912.

Dated: March 20, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–06283 Filed 3–25–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than April 10, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *ACB GST Trust, Aaron Bastian, trustee; SCH GST Trust, Sarah Hampton, trustee; BTB Trust 2019 and EMB Trust 2019, Michelle Bastian, trustee; NWH Trust 2019, Brock Hampton, trustee; and Amanda Walker, Special Trustee of the BTB Trust 2019, the EMB Trust 2019, and the NWH Trust 2019; all of Wichita, Kansas;* as members of the Bastian Family Group to acquire voting shares of Fidelity Financial Corporation and thereby indirectly acquire voting shares of Fidelity Bank of Wichita, both of Wichita, Kansas. Aaron Bastian, Sarah Hampton, Michelle Bastian, and Brock Hampton were approved in 2019 as members of the Bastian Family Group.

2. *The Bergmann 2011 Irrevocable Trust, Alma F. Bergmann, Trustee, Bow Mar, Colorado;* as a member of the Bergman Family Group to retain voting shares of AMG National Corp., Greenwood Village, Colorado, and thereby indirectly retain voting shares of AMG National Trust Bank, Boulder, Colorado. Alma Bergmann was approved previously as a member of the Bergman Family Group.

3. *Adam Duston Rainbolt, Jacob Patrick Rainbolt and Samuel Johnson Rainbolt, all of Oklahoma City, Oklahoma;* as members of the Rainbolt Family Group to acquire voting shares of BancFirst Corporation, Oklahoma City, Oklahoma, and thereby indirectly acquire voting shares of BancFirst, Oklahoma City, Oklahoma and Pegasus Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 23, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–06347 Filed 3–25–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces the issuance of a an Order under Section 362 and 365 of the Public Health Service Act that suspends the introduction of certain persons from countries where an outbreak of a communicable disease exists. The Order was issued on March 20, 2020.

DATES: This action took effect March 20, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle McGowan, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS V18–2, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 20, 2020, the Director of the Centers for Disease Control and Prevention issued the following Order prohibiting the introduction of certain persons from a country where an outbreak of a communicable disease exists.

A copy of the order is provided below and a copy of the signed order can be found at *https://www.cdc.gov/quarantine/aboutlawsregulations quarantineisolation.html.*

U.S. Department of Health and Human Services Centers for Disease Control And Prevention (CDC)

Order Under Sections 362 & 365 Of The Public Health Service Act

(42 U.S.C. 265, 268):

Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists

I. Purpose and Application

I issue this order pursuant to Sections 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. 265, 268, and their implementing regulations, which authorize the Director of the Centers for Disease Control and Prevention (CDC) to suspend the introduction of persons into the United States when the Director determines that the existence of a communicable disease in a foreign country or place creates a serious danger of the introduction of such disease into the United States and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of such introduction is necessary to protect the public health.

This order applies to persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol station at or near the United States borders with Canada and Mexico, subject to the exceptions detailed below. The danger to the public health that results from the introduction of such persons into congregate settings at or near the borders is the touchstone of this order.

This order is necessary to protect the public health from an increase in the serious danger of the introduction of Coronavirus Disease 2019 (COVID–19) into the land POEs, and the Border Patrol stations between POEs, at or near the United States borders with Canada and Mexico. Those facilities are operated by U.S. Customs and Border Protection (CBP), an agency within the U.S. Department of Homeland Security (DHS). This order is also necessary to protect the public health from an increase in the serious danger of the introduction of COVID–19 into the interior of the country when certain persons are processed through the same land POEs and Border Patrol stations and move into the interior of the United States.

There is a serious danger of the introduction of COVID–19 into the land POEs and Border Patrol stations at or near the United States borders with Canada and Mexico, and into the interior of the country as a whole, because COVID–19 exists in Canada, Mexico, and the other countries of origin of persons who migrate to the United States across the United States land borders with Canada and Mexico. Those persons are subject to immigration processing in the land POEs and Border Patrol stations. Many of those persons (typically aliens who lack valid travel documents and are therefore inadmissible) are held in the common areas of the facilities, in close proximity to one another, for hours or days, as they undergo immigration processing. The common areas of such facilities were not designed for, and are not equipped to, quarantine, isolate, or enable social distancing by persons who are or may be infected with COVID–19. The introduction into congregate settings in land POEs and Border Patrol stations of persons from Canada or Mexico increases the already serious danger to the public health to the point of requiring a temporary suspension of the introduction of such persons into the United States.

The public health risks of inaction are stark. They include transmission and spread of COVID–19 to CBP personnel, U.S. citizens, lawful permanent residents, and other persons in the POEs and Border Patrol stations; further transmission and spread of COVID–19 in the interior; and the increased strain that further transmission and spread of COVID–19 would put on the United States healthcare system and supply chain during the current public health emergency.

These risks are troubling because POEs and Border Patrol stations were not designed and are not equipped to deliver medical care to numerous persons, nor are they capable of providing the level of care that vulnerable populations with COVID–19 may require. Indeed, CBP typically transfers persons with acute presentations of illness to local or regional healthcare providers for treatment. Outbreaks of COVID–19 in land POEs or Border Patrol stations would lead to transfers of such persons to local or regional health care providers, which would exhaust the local or regional healthcare resources, or at least reduce the availability of such resources to the domestic population, and further expose local or regional healthcare workers to COVID–19.[1] The continuing availability of healthcare resources to the domestic population is a critical component of the Federal government's overall public health response to COVID–19. Action is required.

As stated above, this order applies to persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land POE or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions. This order does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE. Additionally, this order does not apply to persons whom customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS shall consult with CDC concerning how these types of case-by-case, individualized exceptions shall be made to help ensure consistency with current CDC guidance and public health assessments.

DHS has informed CDC that persons who are traveling from Canada or Mexico (regardless of their country of origin), and who must be held longer in congregate settings in POEs or Border Patrol stations to facilitate immigration processing, would typically be aliens seeking to enter the United States at POEs who do not have proper travel documents, aliens whose entry is otherwise contrary to law, and aliens who are apprehended near the border seeking to unlawfully enter the United States between POEs. This order is intended to cover all such aliens.

For simplicity, I shall refer to the persons covered by this order as ''covered aliens.'' I suspend the introduction of all covered aliens into the United States for a period of 30 days, starting from the date of this order. I may extend this order if necessary to protect the public health.

[1] An outbreak of COVID–19 among CBP personnel in land POEs or Border Patrol stations would impact CBP operations negatively. Although not part of the CDC public health analysis, it bears emphasizing that the impact on CBP could reduce the security of U.S. land borders and the speed with which cargo moves across the same.

II. Factual Basis for Order [1]

1. COVID–19 is a Global Pandemic That has Spread Rapidly

COVID–19 is a communicable disease caused by a novel (new) coronavirus, SARS-CoV–2, that was first identified as the cause of an outbreak of respiratory illness that began in Wuhan, Hubei Province, People's Republic of China (China).[2]

COVID–19 appears to spread easily and sustainably within communities.[3] The virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may also transfer through contact with surfaces or objects contaminated with these droplets.[4] There is also evidence of asymptomatic transmission, in which an individual infected with COVID–19 is capable of spreading the virus to others before exhibiting symptoms.[5] The ease of transmission presents a risk of a surge in hospitalizations for COVID–19, which would reduce available hospital capacity. Such a surge has been identified as a likely contributing factor to the high mortality rate for COVID–19 cases in Italy and China.[6]

Symptoms include fever, cough, and shortness of breath, and typically appear 2–14 days after exposure.[7] Manifestations of severe disease have included severe pneumonia, acute respiratory distress syndrome (ARDS), septic shock, and multi-organ failure.[8] According to the WHO, approximately 3.4% of reported COVID–19 cases have resulted in death globally.[9] This mortality rate is higher among older adults or those with compromised immune systems.[10] Older adults and people who have severe chronic medical conditions like heart, lung, or kidney disease are also at higher risk for more serious COVID–19 illness.[11] Early data suggest older people are twice as likely to have serious COVID–19 illness.[12]

As of March 17, 2020, there were over 179,112 cases of COVID–19 globally in 150 locations, resulting in over 7,426 deaths; more than 4,226 cases have been identified in the United States, with new cases being reported daily and over 75 deaths due to the disease.[13]

Unfortunately, at this time, there is no vaccine against COVID–19, nor are there any approved therapeutics available for those who become infected. Treatment is currently limited to supportive care to manage symptoms. Hospitalization may be required in severe cases and mechanical respiratory support may be needed in the most severe cases. Testing is available to confirm suspected cases of COVID–19 infection. Testing requires specimens collected from the nose, throat or lungs; specimens can only be analyzed in a laboratory setting. At present, results are typically available within three to four days.[14] There is currently no rapid test for COVID–19 that can provide results at the time of sample collection, although efforts are underway to develop such a test.

On January 30, 2020, the Director General of the WHO declared COVID–19 to be a Public Health Emergency of International Concern under the International Health Regulations.[15] The following day, the Secretary of Health and Human Services (HHS) declared that COVID–19 is a public health emergency under the Public Health Service Act (PHSA).[16] On March 11, 2020, the WHO officially classified the global COVID–19 outbreak as a pandemic.[17] On March 13, 2020, the President issued a Presidential Declaration that COVID–19 constitutes a National Emergency.[18] Likewise, all U.S. states, territories, and the District of Columbia have declared a state of emergency in response to the growing spread of COVID–19.[19]

Global efforts to slow the spread of COVID–19 have included sweeping travel limitations. Countries such as Japan, Australia, Israel, Russia, and the Philippines have imposed stringent restrictions on travelers who have recently been in China, the epicenter of the pandemic. Similar travel restrictions have since been imposed on individuals from places experiencing substantial outbreaks, including the Islamic Republic of Iran (Iran), South Korea, and Europe. In many countries, individuals are being asked to self-quarantine for 14 days—the outer limit of the COVID–19's estimated incubation period—following return from a foreign country with sustained community transmission.[20]

[1] Given the dynamic nature of the public health emergency, CDC recognizes that the types of facts and data set forth in this section may change rapidly (even within a matter of hours). The facts and data cited by CDC in this order represent a good-faith effort by the agency to present the current factual justification for the order.

[2] Centers for Disease Control and Prevention, Situation Summary (Mar. 15, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html.*

[3] Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID–19) in Healthcare Settings (Mar. 10, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html.*

[4] *Id.*

[5] Centers for Disease Control and Prevention, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID–19) (Mar. 7, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html.*

[6] Ariana Eunjung Cha, Washington Post, Spiking U.S. Coronavirus Cases Could Force Rationing Decisions Similar to Those Made in Italy, China (Mar. 15, 2020), available at *https://www.washingtonpost.com/health/2020/03/15/coronavirus-rationing-us/.*

[7] Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID–19) (Mar. 16, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html.*

[8] *Supra,* note 4.

[9] WHO Director-General's Opening Remarks at the Media Briefing on COVID–19 (Mar. 3, 2020), available at *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020.*

[10] *Supra,* note 4.

[11] *Id.*

[12] *Id.*

[13] Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID–19): Cases in U.S. (Mar. 17, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html;* World Health Organization, Coronavirus disease 2019 (COVID–19) Situation Report—57 (Mar. 17, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200317-sitrep-57-covid-19.pdf?sfvrsn=a26922f2_2.https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200317-sitrep-57-covid-19.pdf?sfvrsn=a26922f2_2.*

[14] Centers for Disease Control and Prevention, Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons for Coronavirus Disease 2019 (COVID–19) (Mar. 13, 2020), available at *https://www.cdc.gov/coronavirus/2019-nCoV/lab/guidelines-clinical-specimens.html.*

[15] World Health Organization, Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019–nCOv) (January 30, 2020), *https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).*

[16] U.S. Dept. of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, Determination that a Public Health Emergency Exists (January 31, 2020), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[17] World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID–19—11 (March 11, 2020, *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

[18] Message to Congress on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (March 13, 2020) *https://www.whitehouse.gov/briefings-statements/message-congress-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[19] National Governors Assn., Coronavirus: What You Need to Know, (last updated March 17, 2020) *https://www.nga.org/coronavirus/#states.*

[20] James Asquith, [Update] Complete Coronavirus Travel Guide—The Latest Countries Restricting Travel, (March 16, 2020), *https://www.forbes.com/sites/jamesasquith/2020/03/15/complete-coronavirus-travel-guide-the-latest-countries-restricting-travel/#2fdc3b7d715b.*

In the United States, the President has suspended the entry of most travelers from China (excluding Hong Kong and Macau), Iran, the Schengen Area of Europe,[21] the United Kingdom (excluding overseas territories outside of Europe), and the Republic of Ireland, due to COVID–19.[22] CDC has issued Level 3 Travel Health Notices recommending that travelers avoid all nonessential travel to China (excluding Hong Kong and Macau), Iran, South Korea, and most of Europe.[23] The U.S. Department of State has issued a global Level 4 Do Not Travel Advisory advising travelers to avoid all international travel due to the global impact of COVID–19.[24] In addition, CDC has recommended that travelers, particularly those with underlying health conditions, avoid all cruise ship travel worldwide.[25] The U.S. Department of State has similarly issued guidance that U.S. citizens should not travel by cruise ship at this time.[26]

The Federal government announced guidelines stating that the public should avoid discretionary travel; shopping trips; social visits; gatherings in groups of more than 10 people; and eating or drinking at bars, restaurants, and food courts.[27] Numerous states and localities have gone further and shut down restaurants, bars, nightclubs, and theaters. For example, 6 counties surrounding San Francisco, California have issued shelter in place orders impacting nearly 7 million residents.[28] Similar measures are being considered in other cities.[29]

2. COVID–19 Exists in Canada and Mexico

i. Persons From Canada and Other Foreign Countries Where COVID–19 Exists Cross Into the United States From Canada Frequently

As of March 17, 2020, Canada has reported 424 confirmed cases of COVID–19, of which the Canadian government believes 74% are travel-related with an additional 6% being close contacts of travelers.[30] This is a 115% increase in confirmed cases in four days.[31] The provinces of Ontario and British Columbia have reported the most COVID–19 cases, with Ontario reporting a 29% increase in confirmed cases in a single day.[32] Canada's Chief Public Health Officer stated that community transmission of COVID–19 is occurring in multiple provinces and Ottawa public health officials believe that there are at least 1,000 undiagnosed cases in the Canadian capital alone.[33] In an effort to slow the transmission and spread of the virus, the Canadian government banned foreign nationals from all countries except the United States from entering Canada and mandated that returning Canadians self-monitor for COVID–19 symptoms for 14 days following their return, effective March 18, 2020.[34]

The United States and Canada share the longest international border in the world, spanning approximately 3,987 (largely unfenced) miles with 119 ports of entry.[35]

In 2017, approximately 33 million individuals crossed the Canadian border into the United States.[36] Through February of Fiscal Year (FY) 2020, DHS has processed 20,166 inadmissible aliens at POEs at the U.S.-Canadian border, and CBP has apprehended 1,185 inadmissible aliens attempting to unlawfully enter the United States between POEs.[37] These aliens have included not only Canadian nationals, but also 1,062 Iranian nationals, 1,396 Chinese nationals, and 1,326 nationals of Schengen Area countries—all of which currently have COVID 19 outbreaks. Indeed, the United States government has determined that China, Iran, and the countries of the Schengen Area are experiencing sustained person-to-person transmittal of the disease.[38] As of March 15, 2020, the WHO reports that China has 81,048 confirmed cases and 3,204 deaths; Iran has 12,729 confirmed cases and 608 deaths [39]; and the Schengen Area has almost 42,000 confirmed cases.[40] The total number of COVID–19 infections in these countries is impracticable to quantify due to the inherent limitations of epidemiological surveillance, but are likely higher than the reported number of confirmed cases

[21] For purposes of this order, the Schengen Area comprises 26 European states: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

[22] Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus (March 14, 2020) *https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus-2/.*

[23] Centers for Disease Control and Prevention, Travelers' Health, COVID—19 in Europe, Warning—Level 3, Avoid Nonessential Travel—Widespread Ongoing Transmission (March 11, 2020) *https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-europe.*

[24] U.S. Dept. of State, Bureau of Consular Affairs, Global Level 4 Health Advisory—Reconsider Travel (March 15, 2020) *https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html.*

[25] Centers for Disease Control and Prevention, Travelers' Health, COVID—19 and Cruise Ship Travel, Warning—Level 3, Avoid Nonessential Travel (March 17, 2020) *https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship.*

[26] U.S. Dept. of State, Bureau of Consular Affairs, Current Outbreak of Coronavirus Disease 2019 (March 14, 2020) *https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html.*

[27] The White House & Centers for Disease Control and Prevention, 15 Days to Slow the Spread (Mar. 15, 2020), available at *https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.*

[28] Erin Allday, San Francisco Chronicle, Bay Area Orders 'Shelter in Place' Only Essential Businesses Open in 6 Counties (Mar. 18, 2020), available at *https://www.sfchronicle.com/local-politics/article/Bay-Area-must-shelter-in-place-Only-15135014.php.*

[29] Noah Higgins-Dunn & William Feuer, CNBC, New Yorkers Should be Prepared for a 'Shelter-In-Place,' Mayor Bill de Blasio says (Mar. 18, 2020), available at *https://www.cnbc.com/2020/03/17/new-yorkers-should-be-prepared-for-a-shelter-in-place-order-mayor-bill-de-blasio-says.html.*

[30] Government of Canada, Coronavirus disease (COVID–19): Outbreak update (Mar. 15, 2020), *https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html.*

[31] National Post, The Latest Numbers of COVID–19 Cases in Canada as of March 13, 2020 (Mar. 13, 2020), available at *https://nationalpost.com/pmn/news-pmn/canada-news-pmn/the-latest-numbers-of-covid-19-cases-in-canada-as-of-march-13-2020.*

[32] Ryan Rocca, Global News, Coronavirus: Ontario reports 39 new COVID–19 cases, provincial total rises to 142 (Mar. 15, 2020), *https://globalnews.ca/news/6679409/ontario-coronavirus-update-march-15/?utm_source=site_banner.*

[33] Adam Miller, Canadian Broadcast Corporation, 'The Time is Now to Act': COVID–19 spreading in Canada With no Known Link to Travel, Previous Cases (Mar. 16, 2020), available at *https://www.cbc.ca/news/health/coronavirus-community-transmission-canada-1.5498804;* CBC News, Canadian Broadcast Corporation, Community Spread of COVID–19 in Ottawa Likely, Says OPH (Mar. 15, 2020), available at *https://www.cbc.ca/news/canada/ottawa/5-new-covid-cases-ottawa-1.5498489.*

[34] Government of Canada, Coronavirus disease (COVID–19): Canada's Response, At Canadian Borders (Mar. 16, 2020), available at *https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/canadas-reponse.html#acb.*

[35] Janice Cheryh Beaver, Congressional Research Service, U.S. International Borders: Brief Facts (Feb. 1, 2007), available at *https://www.everycrsreport.com/files/20070201_RS21729_514d6fe01555a06aa58c33fd1d8cf34ad1dc50f8.pdf.*

[36] Les Perreaux, The Globe and Mail, Rejection Rate on the Rise for Canadians at U.S. Border (Apr. 14, 2017), available at *https://www.theglobeandmail.com/news/national/rejection-rate-on-the-rise-for-canadians-at-us-border/article34262237/.*

[37] Exhibits 2 and 3, attached.

[38] The White House, Proclamation—Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus (Mar, 11, 2020), available at *https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-2019-novel-coronavirus/.*

[39] World Health Organization, Coronavirus Disease 2019 (COVID–19) Situation Report—55 (Mar. 15, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200315-sitrep-55-covid-19.pdf?sfvrsn=33daa5cb_8.*

[40] *Id.*

because COVID–19 can be present in asymptomatic persons.

On March 18, 2020, the President announced that the United States ''will be, by mutual consent, temporarily closing our Northern Border with Canada to non-essential traffic,'' and DHS will be issuing guidance on the implementation of that arrangement, including exceptions for ''essential travels.''

ii. Mexico Expects Community Transmission of COVID–19 and Has Been Slower To Implement Public Health Measures

According to WHO, as of March 17, 2020, Mexico has only 53 confirmed cases of COVID–19, all found to be travel related, and no deaths.[41] Some Mexican public health experts believe the number of COVID–19 cases in the country is much higher and that Mexico will see widespread community transmission of the virus in the near future.[42] A Deputy Health Minister in Mexico has attributed Mexico's low number of confirmed cases to the virus having been first detected in Mexico on February 27, 2020, approximately one month after the first confirmed cases in the United States.[43] The same official also stated that, based on the Mexican government's modeling, Mexico expects community transmission of COVID–19 to begin between 15 and 40 days from the first confirmed case (in other words, as early as March 13, 2020).[44]

Mexico is only now undertaking some of the public health measures to mitigate the spread of the virus.[45] Schools will be closed from March 20 until April 20, and some large public events are being cancelled.[46] However, many events, such as professional soccer games, have gone forward as planned.[47] Mexico has not announced any restrictions on persons entering the country from areas with sustained human-to-human transmission of the disease.[48] There are currently no COVID–19 health screenings at Mexico's international airports, although Mexican officials have announced that some additional screening measures may be implemented.[49] Medical experts believe that community transmission and spread of COVID–19 at asylum camps and shelters along the U.S. border is inevitable, once community transmission begins in Mexico.[50]

Mexico has fewer health care resources than the United States. Mexico's total expenditure on health care per capita is $1,122, compared to the United States' $9,403 per person.[51] On average, there are only 1.38 available hospital beds per every 1,000 inhabitants in Mexico, compared to 2.77 available hospital beds per every 1,000 inhabitants in the United States.[52] Similarly, there are approximately 2.2 practicing doctors and 2.9 practicing nurses per every 1,000 inhabitants in Mexico, compared to 2.6 practicing doctors and 8.6 practicing nurses per every 1,000 inhabitants in the United States.[53] This raises public health concerns, given that Mexico is likely to reach community transmission soon (including in asylum camps and shelters).

While Mexico responded vigorously to the H1N1 pandemic in 2009–2010, Mexico does not appear to be approaching the COVID–19 pandemic with the same dispatch. In 2003, Mexico established the National Preparedness and Response Plan for an Influenza Pandemic, which was first tested during the 2009 outbreak of H1N1 influenza. Mexico helped contain that outbreak, primarily through early detection of the outbreak, followed by the declaration of a ''sanitary emergency'' that focused on raising public awareness of the need to contain the spread with proper hygiene, school closings, cancellation of large public gatherings, and aggressive surveillance through widespread testing.[54] Mexico does not appear to have undertaken equivalent measures in response to the COVID–19 pandemic. COVID–19 is more infectious than H1N1, and so CDC expected a more vigorous Mexican response to COVID–19, which has not occurred.

It also bears noting that Mexico struggled to mobilize its strategic stockpile of the antiviral drug Oseltamivir during the 2009–2010 H1N1 outbreak.[55] The entire strategic stockpile was centrally stored as dry bulk product, and the national pandemic preparedness plan called for the dry bulk to be distributed to and reconstituted by Mexico's 31 state-level public health laboratories.[56] After the onset of the outbreak, Mexican authorities realized that the network of

[41] *Id.* World Health Organization, Coronavirus Disease 2019 (COVID–19) Situation Report—57 (Mar. 17, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200317-sitrep-57-covid-19.pdf?sfvrsn=a26922f2_4.*

[42] Andrea Ano, Latin Post, Experts Question Mexico's Coronavirus Preparations (Mar. 15, 2020), available at *http://www.latinpost.com/articles/144156/20200315/experts-question-mexicos-coronavirus-preparations.htm;* Mexico News Daily, One Former Health Minister Critical of Coronavirus Response (Mar. 14, 2020), available at *https://mexiconewsdaily.com/news/former-health-secretary-critical-of-coronavirus-response/.*

[43] Mexico News Daily, Why so few Cases of Coronavirus? Deputy Minister Explains In Other Countries the Disease was Detected Earlier (Mar. 13, 2020), available at *https://mexiconewsdaily.com/news/why-so-few-cases-of-coronavirus-deputy-minister-explains/. https://mexiconewsdaily.com/news/why-so-few-cases-of-coronavirus-deputy-minister-explains/.*

[44] Mexico News Daily, Business Insider, A Widespread Outbreak of Coronavirus in Mexico is 'Inevitable,' Health Officials Say (Mar. 13, 2020), available at *https://www.businessinsider.com/widespread-outbreak-of-coronavirus-in-mexico-is-inevitable-2020-3. https://www.businessinsider.com/widespread-outbreak-of-coronavirus-in-mexico-is-inevitable-2020-3.*

[45] Patrick J. McDonnell, Katie Linthicum, Tracy Wilkinson, L.A. Times, Mexico, Latin America Gear up for Next Phase of Coronavirus Threat (Mar. 14, 2020), available at *https://www.latimes.com/world-nation/story/2020-03-14/mexico-latin-america-gear-up-for-next-phase-of-coronavirus-threat; cf* Dave Graham, Reuters, Mexico Government Urges Public to Keep Distance Over Coronavirus; President Embraces Crowds (Mar. 15, 2020), available at *https://www.reuters.com/article/us-health-coronavirus-mexico/mexico-government-urges-public-to-keep-distance-over-coronavirus-president-embraces-crowds-idUSKBN2130A0.*

[46] Alexis Ortiz & Karla Linares, El Universal, COVID–19: Mexico to Suspend Classes Over Coronavirus Concerns (Mar. 14, 2020), available at *https://www.eluniversal.com.mx/english/covid-19-mexico-suspend-classes-over-coronavirus-concerns.*

[47] Kirk Semple, The N.Y. Times, 'We Call for Calm': Mexico's Restrained Response to the Coronavirus (Mar. 15, 2020), available at *https://www.nytimes.com/2020/03/15/sports/soccer/soccer-mexico-coronavirus.html.*

[48] Wendy Fry, The San Diego Union-Tribune, While Impacts of Coronavirus Remain Mild in Baja California, Mexico Begins Bracing for Outbreak (Mar. 13, 2020), available at *https://www.sandiegouniontribune.com/news/border-baja-california/story/2020-03-13/impacts-of-coronavirus-remain-mild-in-baja-california.*

[49] *Id.*

[50] Rick Jervis, USA Today, Migrants Waiting at U.S.-Mexico Border at Rick of Coronavirus, Health Experts Warn (Mar. 17, 2020), available at *https://www.usatoday.com/story/news/nation/2020/03/17/us-border-could-hit-hard-coronavirus-migrants-wait-mexico/5062446002/;* Rafael Carranza, AZ Central, New World's Largest Border Crossing, Tijuana Shelters Eye the new Coronavirus with Worry (Mar. 14, 2020), available *https://www.azcentral.com/story/news/politics/immigration/2020/03/14/tijuana-migrant-shelters-coronavirus-covid-19/5038134002/.*

[51] *Compare* WHO, Mexico—Statistics, *https://www.who.int/countries/mex/en/,* with WHO, United States of America—Statistics, *https://www.who.int/countries/usa/en/.*

[52] *See* Organization for Economic Co-operation and Development (''OECD''), Data—Hospital Beds, *https://data.oecd.org/healtheqt/hospital-beds.htm.*

[53] *Compare* The World Bank, Data—Physicians (per 1,000 people), *https://data.worldbank.org/indicator/SH.MED.PHYS.ZS,* with The World Bank, Data—Nurses and Midwives (per 1,000 people), *https://data.worldbank.org/indicator/SH.MED.PHYS.ZS.*

[54] *See* Jose A. Cordova-Villalobos et al., The influenza A (H1N1) epidemic in Mexico: Lessons learned, Health Research Policy & Systems 7:21 (Sept. 28, 2009); Gerardo Chowell, Characterizing the Epidemiology of the 2009 Influenza A/H1N1 Pandemic in Mexico, PLOS Med 8(5): e1000436 (May 24, 2011).

[55] Luis Meave Gutierrez-Mendoza et al., Lessons from the Field: Oseltamivir storage, distribution and dispensing following the 2009 H1N1 influenza outbreak in Mexico, Bull World Health Organ, 90:782–787 (Aug. 17, 2012).

[56] *Id.*

labs they intended to rely on were not properly equipped or authorized to prepare the antiviral medication, leading to complications in implementing the planned response.[57] A comparative assessment of national pandemic preparedness plans found that Mexico's plan was missing key annexes regarding case management, surveillance, communication, laboratory sample and transport, public health measures, and plans for private business.[58] While no public health response is perfect, and testing for COVID–19 has presented global challenges, the experience of Mexican laboratories during the H1N1 outbreak raises concerns about their current capabilities.

The existence of COVID–19 in Mexico presents a serious danger of the introduction of COVID–19 into the United States for these reasons, and because the level of migration across the United States border with Mexico is so high. The U.S.-Mexico border runs an estimated 1,933 miles.[59] To date in fiscal year (FY) 2020, DHS has processed 34,141 inadmissible aliens at POEs along the border, and U.S. Border Patrol has apprehended 117,305 aliens attempting to unlawfully enter the United States between POEs, almost 110,000 of whom reported Mexican citizenship.[60] Over 15,000 were nationals of other countries that are now experiencing sustained human to human transmission of COVID–19, including approximately 1,500 Chinese nationals and 6,200 Brazilian nationals.[61]

3. Land POEs and Border Patrol Stations Are Congregate Settings That Present Infection Control Challenges

CBP screens and processes millions of aliens who seek to enter the United States legally each year at POEs, as well as apprehending, screening, and processing the hundreds of thousands of aliens who attempt to unlawfully enter the United States each year by crossing between POEs. *See* Exhibits 2–3 (charts summarizing number of apprehensions and inadmissible aliens in FY 2020, as of Mar. 3. 2020). Apprehended aliens vary significantly by age and health status. At this time, the majority tend to be adults between 25 and 40 years old, and include those with chronic health problems such as diabetes and high blood pressure (which are comorbidities known to increase the health risks associated with COVID–19 infections and, thus, the likelihood of requiring medical intervention after infection).[62]

i. Covered Aliens in Land POEs Who CBP Screens and Processes for Admissibility Spend Hours or Days in Congregate Areas

There are 328 land POEs along the northern and southern borders operated by CBP. At land POEs, CBP screens and processes the millions of U.S. citizens, lawful permanent residents, and other aliens who seek to enter the United States from Canada and Mexico every year.

One of the CBP's critical functions at POEs is to screen and process arriving aliens to determine whether they are admissible to the United States. CDC understands from DHS that inadmissible aliens are typically those who do not have proper travel documents to enter or whose entry is otherwise contrary to law, such as those who are interdicted attempting to smuggle contraband into the United States. It takes CBP much longer to screen inadmissible aliens than U.S. citizens, lawful permanent residents, and aliens with valid travel documents, all of whom tend to move quickly into the United States after contact with CBP personnel and other travelers at POEs. This difference is due in part to the fact that inadmissible aliens tend to arrive by foot (not vehicle), and lack documentation. Inadmissible aliens in land POEs may spend hours or days in congregate areas while undergoing processing. During that time, they are in close proximity to CBP personnel and other travelers, including U.S. citizens and other aliens.

The admissibility of each alien is determined by a CBP officer. As part of the current admissibility screening, aliens are subject to an initial set of questions designed to elicit their risk factors for various contagious diseases, including COVID–19. Questions would include recent travel and any physical symptoms they are experiencing. CBP officers also use this initial questioning to visually observe arrivals for any obvious signs of illness. Those whose appearance or responses indicate possible exposure to or infection with COVID–19 are directed to don a surgical mask, and are escorted by a CBP officer (also wearing a surgical mask) for further evaluation and risk assessment by the contract medical staff, which is conducted in a designated area within the POE.

Presently, if CBP determines that an alien may be exposed to or infected with COVID–19, the alien is escorted to a separate, enclosed waiting area (usually a small holding room adjacent to normal processing areas) while CBP alerts the relevant health authorities. Specifically, CBP notifies the local health department, CDC, and CBP's Senior Medical Advisor. Local health officials and possibly CDC personnel if available, then consult with CBP to determine whether the individual should be tested for COVID–19 and where that testing should occur. CBP follows guidance from CDC and local health officials regarding transport to the testing site. If the alien is sent for testing in an ambulance, a CBP officer will accompany the individual in the ambulance. If CBP vehicles are used for transport, they are disinfected afterwards. In addition, CBP will consult with U.S. Immigration and Customs Enforcement (ICE) officials regarding the transport of the alien outside of the POE, given that the individual leaving the CBP facility does not have a preexisting legal right to enter the United States and must remain in custody while testing and treatment is carried out.

These infection control procedures are not easily scalable for large numbers of aliens. Moreover, an influx of infected, asymptomatic aliens would present significant infection control challenges for CBP, as the screening of such an aliens may not prompt testing. The aliens would remain in congregate areas in the POE while CBP finishes the screening and processing. During that time, the alien could infect CBP personnel or other aliens with COVID–19.

ii. Border Patrol Stations Present Greater Infection Control Challenges Than POEs Because They Often Have Less Space and Fewer Resources

In addition to the 328 POEs, CBP operates a network of Border Patrol stations to apprehend, process, and temporarily hold aliens seeking to unlawfully enter the United States *between* POEs. CBP has a total of 136 Border Patrol stations along the land and coastal borders, and many Border Patrol stations, particularly along the Southwest border, are in remote locations.

Border Patrol stations vary significantly in terms of size and layout, but generally have several congregate holding areas where covered aliens are divided based on demographic factors such as age, gender, and family status,

[57] *Id.*

[58] WHO, Comparative Analysis of National Pandemic Influenza Preparedness Plans (Jan. 2011), available at *https://www.who.int/influenza/resources/documents/comparative_analysis_php_2011_en/en/.*

[59] *Supra,* note 36.

[60] Exhibits 2 and 3, attached.

[61] *Id.*

[62] *Supra,* note 4.

as required by law. A typical Border Patrol station is designed to temporarily hold a maximum of 150 to 300 people standing shoulder-to-shoulder, and has between two to five separate holding areas that can be used to segregate adult males, adult females, unaccompanied children, and family units, with possible further subdivision for female- and male-led family units. The subdividing of aliens is crucial to maintaining order and safety inside the Border Patrol stations because the experience of CBP is that certain cohorts of covered aliens are antagonistic towards one another. On average, a covered alien apprehended between POEs will spend approximately 78 hours in a Border Patrol station before transfer to ICE.

Only 46 of the 136 Border Patrol stations offer any medical services. The services that are offered are administered by contract medical support and are limited to glucose, pregnancy, influenza testing, and basic emergency care. The 46 facilities are all located on the southwest border with Mexico.

As discussed more fully below, the infection control challenges in Border Patrol stations can be greater than the challenges in POEs, especially when the Border Patrol stations are at or near capacity. This is because covered aliens are in close proximity with one another and CBP personnel, and there is typically no suitable space for quarantining, isolating, or engaging in social distancing with aliens.

iii. The United States Public Health Service (USPHS) Observed Infection Control Challenges During a Site Visit to El Paso del Norte POE

On March 12–13, 2020, a USPHS Scientist officer conducted an observational visit to the El Paso del Norte POE (El Paso PDN). The USPHS Scientist officer viewed directly the areas within the POE that CBP uses to screen and process aliens for admissibility. (Exhibit 1).

El Paso PDN is one of the country's busiest border crossings, with more than 10 million people entering the United States from Mexico every year. It receives a constant, heavy inflow of pedestrian and vehicular traffic, consisting of approximately 12,000 pedestrians and 6,000 vehicles per day. El Paso PDN operates 24/7, with a 3–4 person team of contract medical staff who work 12 hour shifts and provide 24/7 coverage. The medical team is typically led by a nurse practitioner or physician assistant, with the remaining team members consisting of emergency medical technicians (EMT) or registered nurses.

El Paso PDN adheres to the general process for screening and processing covered aliens described in § II.3.i above. In terms of medical capabilities, El Paso PDN performs on-site testing only for pregnancy, blood glucose levels, and Influenza A/B. Any other testing or treatment is performed by nearby medical providers. El Paso PDN is representative of other POEs in that it is heavily reliant on local and regional hospitals and EMT services to care for aliens. El Paso PDN has several small waiting rooms that are used to isolate individuals suspected of exposure to or infection with a contagious disease. Each room can fit approximately 6–7 people, and is equipped with windows to permit observation of the rooms' occupants, and locks to prevent them from leaving.

Facility staff indicated they have been fit-tested for N95 respirators, receive biannual N95 training, and that the facility has an approximately 30-day regular use supply of N95 respirators for use by CBP personnel. El Paso PDN has not encountered any suspected COVID–19 cases, but does not currently perform COVID–19 testing.

The site was selected by CBP because it is of one of CBP's largest and best equipped POEs on the Southwest Border. Other POEs have fewer capabilities.

The USPHS Scientist officer observed that even at El Paso PDN, covered aliens would present infection control challenges during processing and screening in congregate areas.

III. The Introduction Into DHS Facilities of Persons From Countries With COVID–19 Would Increase the Already Serious Danger of COVID–19 in the Facilities

1. POEs and Border Patrol Stations Are Not Structured or Equipped to Effectively Mitigate the Risks Presented by COVID–19

The time required to test for COVID–19 dictates, at least in part, the infection control measures that DHS would have to implement at POEs and Border Patrol stations to effectively mitigate the public health risks presented by covered aliens suspected of harboring or being infected with COVID–19. At this time, there is no available COVID–19 test that yields results at the time of sample collection, such as the rapid testing available for certain influenza strains that yields results in as little as 15 minutes. Nor is there a COVID–19 test that has been cleared for use in a non-clinical setting such as a POE or a Border Patrol station lacking isolation capabilities. Rather, current COVID–19 testing would require the collection of samples from aliens suspected of infection and the mailing of the samples to a laboratory for analysis, with results available within 3–4 days. In theory, to mitigate public health risks, CBP would have to transport aliens in their custody suspected of COVID–19 infection to a nearby medical site for sample collection and testing, and then implement containment protocols (*i.e.,* quarantine or isolation) in their facilities while awaiting test results. CDC would not have the resources or personnel required to house in quarantine or isolation or monitor dozens, much less hundreds or thousands of aliens. The burden would shift to state and local governments, and it seems equally unlikely to CDC that they could collectively implement such a massive public health initiative under current conditions.

POEs and Border Patrol stations are not structured or equipped to implement quarantine, isolation, or social distancing protocols on site for COVID–19 for even small numbers of aliens, much less dozens or hundreds of them together with CBP personnel. In particular, POEs and Border Patrol stations were designed for the purpose of short-term holding in a congregate setting. The vast majority of those facilities lack the areas needed to effectively quarantine or isolate aliens for COVID–19 while test results are pending. Moreover, the process for screening and ultimately quarantining or isolating aliens suspected of COVID–19 infection would require the alien to move throughout various sections of the facility, creating a risk of exposure to all nearby—including DHS personnel and other aliens.[63]

Because POEs and Border Patrol stations are not structured or equipped for quarantine or isolation for COVID–19, DHS's alternative would be to try to conduct some type of social distancing in congregate holding areas. The numbers of aliens and the size and capacity of the congregate holding areas are not at all conducive to effective social distancing, which requires individuals to maintain a distance of at least six feet from each other, and to avoid contact with shared surfaces. The

[63] The use of congregate holding areas for quarantine or isolation would present a significant risk of transmitting COVID–19 for obvious reasons. Even if a congregate holding area were used to try to quarantine or isolate a single alien, it would significantly limit the facility's overall holding capacity, and potentially increase the public health risks in other congregate holding areas (if any space were left at all, after subdividing demographics).

typical dimensions of the congregate areas at POEs and Border Patrol stations would not provide sufficient space if more than a handful of individuals were present in congregate areas (which is typically the situation). Such an approach would be fraught with public health risks for not only the aliens but also DHS personnel nearby.

CDC also has a public health tool called conditional release, which involves the release of potentially infected individuals from federal custody subject to conditions calculated to mitigate the risk of disease transmission, such as mandatory self-isolation and CDC monitoring at home. Conditional release is not a viable solution in this context because many aliens covered by this order may lack homes or other places in the United States where they can self-isolate, and CDC lacks the resources and personnel necessary to effectively monitor such a large number of persons. Reliance on the conditional release mechanism in this context would jeopardize, not protect, the public health.

2. POEs and Border Patrol Stations Are Not Structured or Equipped to Safely House or Care for Aliens Infected With COVID–19

POEs and Border Patrol stations would lack the capacity to provide the medical monitoring and care that would be needed by covered aliens confirmed to be infected with COVID–19. Only a few facilities offer medical services directly, and the medical services that are provided are limited to care for minor ailments, basic emergency care, or the on-site administration of prophylaxis for seasonal influenza (*i.e.,* Tamiflu). The facilities are heavily reliant on local and regional hospitals and emergency medical system (EMS) resources.

Moreover, many of the facilities are geographically remote and far from the major medical centers or hospital systems equipped to handle COVID–19 outbreaks. Infected covered aliens would either have to be transported tens or hundreds of miles to the nearest appropriately equipped medical center, or brought to smaller local providers who might lack the resources or capacity to accept COVID–19 cases involving covered aliens. Indeed, U.S. states along the border with Mexico have some of the lowest number of hospital beds per 1,000 inhabitants in the United States.[64] Arizona, California, and Texas also have some of the largest numbers of residents living in primary care shortage areas of any U.S. states or territories.[65] The shift of healthcare resources to large numbers of infected, covered aliens would divert the same resources away from the domestic population, which would undermine the Federal response to COVID–19. It would also increase the risk of exposure to COVID–19 for domestic healthcare workers. Such a scenario is not tenable given the current nationwide public health emergency.

IV. Determination and Implementation

Based on the foregoing, I find there is a serious danger of the introduction of COVID–19 into the POEs and Border Patrol stations at or nearby the United States borders with Canada and Mexico, and the interior of the country as a whole, because COVID–19 exists in Canada, Mexico, and the countries or places of origin of the covered aliens who migrate to the United States across the land borders with Canada and Mexico. I also find that the introduction into POEs and Border Patrol stations of covered aliens increases the seriousness of the danger to the point of requiring a temporary suspension of the introduction of covered aliens into the United States.

It is necessary for the public health to immediately suspend the introduction of covered aliens. The immediate suspension of the introduction of these aliens requires the movement of all such aliens to the country from which they entered the United States, or their country of origin, or another location as practicable, as rapidly as possible, with as little time spent in congregate settings as practicable under the circumstances. The faster a covered alien is returned to the country from which they entered the United States, to their country of origin, or another location as practicable, the lower the risk the alien poses of introducing, transmitting, or spreading COVID–19 into POEs, Border Patrol stations, other congregate settings, and the interior.

My determinations are based on information provided to CDC by DHS personnel regarding DHS border operations and facilities; the report of the observational visit to the El Paso PDN conducted by the USPHS Scientist officer; figures on the numbers of apprehensions at the United States borders with Canada and Mexico of aliens from countries where COVID–19 exists; information from the public domain; and my own personal knowledge and experience.

I consulted with DHS before I issued this order, and requested that DHS implement this order because CDC does not have the capability, resources, or personnel needed to do so. As part of the consultation, CBP developed an operational plan for implementing the order. Accordingly, DHS will, where necessary, use repatriation flights to move covered aliens on a space-available basis, as authorized by law. The plan is generally consistent with the language of this order directing that covered aliens spend as little time in congregate settings as practicable under the circumstances. In my view, it is also the only viable alternative for implementing the order; CDC's other public health tools are not viable mechanisms given CDC resource and personnel constraints, the large numbers of covered aliens involved, and the likelihood that covered aliens do not have homes in the United States.[66]

This order is not a rule within the meaning of the Administrative Procedure Act (APA). In the event this order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this order and a delay in effective date. Given the public health emergency caused by COVID–19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay the issuing and effective date of this order. In addition, because this order concerns the ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared border, it directly ''involve[s] . . . a . . .

[64] Arizona has 1.9 hospital beds per 1,000 inhabitants; California has 1.8; New Mexico has 1.8, and Texas has 2.3. Kaiser Family Foundation, State Health Facts: Hospitals Per 1,000 Population by Ownership Type (2018), available at *https://www.kff.org/other/state-indicator/beds-by-ownership/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Total%22,%22sort%22:%22asc%22%7D.*

[65] Kaiser Family Foundation, State Health Facts: Primary Care Health Professional Shortage Areas (HPSAs) (Sept. 30, 2019), available at *https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Percent%20of%20Need%20Met%22,%22sort%22:%22asc%22%7D.*

[66] CDC relies on the Department of Defense, other federal agencies, and state and local governments to provide both logistical support and facilities for federal quarantines. CDC lacks the resources, manpower, and facilities to quarantine covered aliens. Similarly, DHS has informed CDC that in the near term, it is not financially or logistically practicable for DHS to build additional facilities at POEs and Border Patrol stations for use in quarantines or isolation. Certain soft-sided facilities may be inappropriate for use in quarantines or isolation. DHS would need at least 90 days (likely more) to build and start bringing hard-sided facilities online. Such an approach would not help address the current public health emergency presented to the Federal government today.

foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Notice and comment and a delay in effective date would not be required for that reason as well.

* * * * *

This order shall remain effective for 30 days, or until I determine that the danger of further introduction of COVID–19 into the United States has ceased to be a serious danger to the public health, whichever is shorter. I may extend or modify this order as needed to protect the public health.

Exhibit 1

Date: March 14, 2020.

To: RADM Sylvia Trent-Adams, Principal Deputy Assistant Secretary for Health, Office of the Assistant Secretary for Health (OASH); RADM Erica Schwartz, Deputy Surgeon General, Office of the Surgeon General, OASH.

From: CAPT Mehran S. Massoudi, Regional Health Administrator, Region VI, OASH.

RE: Report of Observational Visit to the DHS El Paso *Paso del Norte* Port of Entry.

Mission: Observe normal work flow process and personnel traffic at the El Paso *Paso del Norte* Port of Entry and assess possible public health risks or vulnerabilities posed by the Coronavirus Disease (COVID–19) at Department of Homeland Security (DHS) border facilities.

On March 12–13, 2020, I traveled to El Paso *Paso del Norte (PDN)* Port of Entry and met with Port Director Good, Watch Commander Alvarez, Watch Commander Gomez, and Supervisor Officer Rivas.

The site I visited was selected by the Customs and Border Patrol (CBP) Senior Medical Advisor Dr. Tarantino. It was intended to serve as an example of one of CBP's largest and best-equipped Ports of Entry (POEs) on the Southwest Border, not a representative of other POEs across the country.

The El Paso PDN is one of the country's busiest border crossings, and sees approximately 10 million people entering the United States from Mexico annually. The El Paso PDN processes a flow of approximately 12,000 pedestrians and approximately 6–8,000 vehicles per day. Field statistics for FY19 and Jan. 2020 were supplied by the Public Affairs and Community Liaison Director, El Paso Field Office and are attached to this report, as Attachments A and B, respectively. The location is staffed by CBP officers 24/7 working 8 hour shifts. In addition, the facility has 24/7 coverage by a third party contracted Medical Team comprised of 3–4 members, led by a nurse practitioner or physician assistant, with the rest of the team comprised of emergency medical technicians or Registered Nurses.

There are two points of entry into PDN: a pedestrian and vehicular mode. Both are staffed by the same CBP officers from El Paso. Each person seeking entry to the United States at PDN is asked a series of questions upon encountering the CBP officer, including the travel-related COVID–19 screening questions. Officers use visual cues as well as responses to the screening questions to determine the level of risk of COVID–19 infection. If CBP officers suspect any level of risk or signs/symptoms of illness, they put on a surgical mask (CBP officers wear gloves as a normal practice) and give a surgical mask to the individual as well. The officer would then escort the individual to an area where the officer would first inspect the individual for anything that could be used as a weapon, and then fingerprint the individual (if applicable). The individual would then be triaged to an area where they would be administered a 13-part questionnaire, with a series of questions added about COVID–19 by the third party contract Medical Team. The questionnaire is attached as Attachment C.

If an individual is determined to be at risk of COVID–19, the individual is escorted to one of several small waiting rooms, each with a window and locked door, while the local health department, Centers for Disease Control and Prevention (CDC), and CBP's Senior Medical Advisor are notified. Local health officials and/or CDC would then be consulted to determine next steps with respect to testing and/or treatment for COVID–19.

If testing is recommended, then CBP will follow guidance from CDC and local health officials about which third party hospital to transport the individual. If the individual is sent for testing in an ambulance, a CBP officer will accompany the individual inside the ambulance. In addition, CBP will consult with Immigration and Customs Enforcement (ICE) officials if the individual leaving the CBP facility has not yet been processed and so must remain in custody.

CBP personnel informed me that the same basic process described above would be applied to those who arrived on foot or by vehicle—provided the individual provided a response to the screening questions indicative of COVID–19 exposure/infection or appeared to exhibit signs/symptoms of the disease requiring a medical consult for further evaluation and possible testing.

Key Observations:

- All CBP officers are fit-tested twice a year for N–95 respirators, but when asked and observed, only surgical masks were identified for use. I was told that the N–95 respirators would be used when there is a declaration of a pandemic or when they are told to use them. Leadership at the site said that they have approximately a 30-day supply of N–95 respirators on hand at the PDN sites. I observed that all CBP officers had a box of gloves and a box of N–95 respirators by their feet behind their workstations.
- The CDC Quarantine Station in El Paso makes routine visits to stop by and answer any questions and provide any updates as needed for the CBP officers. The CBP officers carry a small, two-sided laminated card with key evaluation criteria. The card is attached as Attachment D.
- Observed color-posters of CDC COVID–19 awareness messaging on walls throughout the facility.
- The third party contract Medical Team performs only a small number of tests on-site (rapid Influenza A/B, pregnancy, and glucose). Tests for other conditions, particularly other contagious diseases like measles, are performed off-site at a third part medical facility.
- If an individual is suspected of having an infectious disease or needs to be held for a short period of time, they are put in a small room with a window and a locked door, adjacent to the CBP officers' work-area. This is not an isolation room because the HVAC system is shared with the rest of the facility, and does not have adequate capabilities to contain COVID–19 (*i.e.,* negative pressure, HEPA filtration). Escorting a contagious individual to and from this room, as well as holding them there, poses a significant risk of exposing nearby CBP personnel.
- If an individual actually infected with COVID–19 were subject to the above screening processes, they would be maneuvered throughout various sections of the POE, creating a significant risk of COVID–19 exposure to other aliens and CBP officers in the POE.

BILLING CODE 4163–18–P

[Attachment A: FY 2019 Field Statistics]

U.S. Department of Homeland Security
9400 Viscount
El Paso, TX 79925

U.S. Customs and Border Protection

January 21, 2019

To: Stakeholders and interested parties

From: Ruben Jauregui
Director, Communication Management Office
Public Affairs and Community Liaison
El Paso Field Office
El Paso, Texas

Subject: El Paso Field Office Traffic Summary Report January-December
2019

January 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	**Paso del Norte**	0	642	228,341	0	0	0	376,229
El Paso	**Bridge of Americas**	24,576	719	332,330	116	5,387	2,817	104,379
El Paso	**Ysleta Bridge**	46,518	0	238,762	0	0	0	116,175
El Paso	**Stanton St DCL**	0	0	119,715	0	0	0	0
El Paso	**Ysleta DCL**	0	0	101,452	0	0	0	0
Presidio		823	114	62,393	0	0	0	19,563
Boquillas		0	0	0	0	0	0	144
Serna/Tornillo		0	0	24,750	0	0	0	3,124
Serna/Tornillo	**Ft Hancock**	0	0	8,002	0	0	0	162
Columbus	**Columbus**	863	0	26,777	0	0	0	23,158
Columbus	**Antelope Wells**	0	*120	1,163	0	0	0	0
Santa Teresa		9,733	19	46,230	0	0	0	10,132

***Antelope Wells numbers are for passenger vans processed**

February 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	793	208,026	0	0	0	347,742
El Paso	Bridge of Americas	22,159	539	296,190	116	6,503	2,487	93,721
El Paso	Ysleta Bridge	43,800	0	213,097	0	0	0	115,133
El Paso	Stanton St DCL	0	0	114,954	0	0	0	0
El Paso	Ysleta DCL	0	0	96,686	0	0	0	0
Presidio		707	77	53,410	0	0	0	15,362
Boquillas		0	0	0	0	0	0	2,385
Serna/Tornillo		0	0	24,503	0	0	0	3,284
Serna/Tornillo	Ft Hancock	0	0	7,792	0	0	0	143
Columbus	Columbus	418	0	24,635	0	0	0	21,340
Columbus	Antelope Wells	0	*76	793	0	0	0	0
Santa Teresa		9,116	15	42,335	0	0	0	7,413

*Antelope Wells numbers are for passenger vans processed

March 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	759	225,206	0	0	0	408,028
El Paso	Bridge of Americas	23,832	684	305,090	109	5,751	3,180	115,579
El Paso	Ysleta Bridge	45,152	0	221,472	0	0	0	136,788
El Paso	Stanton St DCL	0	0	124,712	0	0	0	0
El Paso	Ysleta DCL	0	0	106,205	0	0	0	0
Presidio		791	105	62,810	0	0	0	20,473
Boquillas		0	0	0	0	0	0	4,362
Serna/Tornillo		0	0	28,181	0	0	0	3,061
Serna/Tornillo	Ft Hancock	0	0	9,908	0	0	0	224
Columbus	Columbus	377	0	28,673	0	0	0	21,951
Columbus	Antelope Wells	0	*103	972	0	0	0	0
Santa Teresa		9,903	24	52,541	0	0	0	9,898

*Antelope Wells numbers are for passenger vans processed

April 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	750	155,983	0	0	0	380,366
El Paso	Bridge of Americas	18,973	670	200,817	112	6,932	3,211	154,135
El Paso	Ysleta Bridge	38,449	0	140,421	0	0	0	173,111
El Paso	Stanton St DCL	0	0	130,521	0	0	0	0
El Paso	Ysleta DCL	0	0	92,139	0	0	0	0
Presidio		829	123	55,708	0	0	0	35,469
Boquillas		0	0	0	0	0	0	2,875
Serna/Tornillo		0	0	28,326	0	0	0	4,361
Serna/Tornillo	Ft Hancock	0	0	11,545	0	0	0	339
Columbus	Columbus	608	0	28,117	0	0	0	24,299
Columbus	Antelope Wells	0	*127	1,302	0	0	0	0
Santa Teresa		10,187	29	45,852	0	0	0	20,355

*Antelope Wells numbers are for passenger vans processed

May 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	882	168,894	0	0	0	379,532
El Paso	Bridge of Americas	20,390	705	242,474	134	8,308	3,239	147,259
El Paso	Ysleta Bridge	47,835	0	169,580	0	0	0	168,443
El Paso	Stanton St DCL	0	0	138,374	0	0	0	0
El Paso	Ysleta DCL	0	0	108,888	0	0	0	0
Presidio		875	0	58,129	0	0	0	23,072
Boquillas		0	0	0	0	0	0	1,563
Serna/Tornillo		0	118	29,010	0	0	0	3,571
Serna/Tornillo	Ft Hancock	0	0	11,630	0	0	0	216
Columbus	Columbus	1,030	0	30,660	0	0	0	24,365
Columbus	Antelope Wells	0	*125	1,135	0	0	0	0
Santa Teresa		13,221	13	49,834	0	0	0	14,221

*Antelope Wells numbers are for passenger vans processed

June 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	934	158,621	0	0	0	372,565
El Paso	Bridge of Americas	14,620	789	224,054	121	7,820	3,116	154,368
El Paso	Ysleta Bridge	48,564	0	181,356	0	0	0	161,103
El Paso	Stanton St DCL	0	0	123,047	0	0	0	0
El Paso	Ysleta DCL	0	0	104,499	0	0	0	0
Presidio		643	117	55,964	0	0	0	29,194
Boquillas		0	0	0	0	0	0	1,007
Serna/Tornillo		0	0	26,625	0	0	0	1,506
Serna/Tornillo	Ft Hancock	0	0	9,443	0	0	0	334
Columbus	Columbus	1,204	0	29,661	0	0	0	15,392
Columbus	Antelope Wells	0	*127	992	0	0	0	0
Santa Teresa		11,843	30	50,672	0	0	0	16,847

*Antelope Wells numbers are for passenger vans processed

July 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	862	146,360	0	0	0	369,293
El Paso	Bridge of Americas	15,711	883	217,658	126	8,741	2,660	182,378
El Paso	Ysleta Bridge	51,922	0	305,414	0	0	0	178,969
El Paso	Stanton St DCL	0	0	123,123	0	0	0	0
El Paso	Ysleta DCL	0	0	107,296	0	0	0	0
Presidio		830	162	58,934	0	0	0	37,779
Boquillas		0	0	0	0	0	0	934
Serna/Tornillo		0	0	33,967	0	0	0	1,510
Serna/Tornillo	Ft Hancock	0	0	9,456	0	0	0	385
Columbus	Columbus	1,808	0	32,455	0	0	0	22,959
Columbus	Antelope Wells	0	*152	1,473	0	0	0	0
Santa Teresa		12,915	19	56,495	0	0	0	26,487

*Antelope Wells numbers are for passenger vans processed

August 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	981	163,806	0	0	0	349,842
El Paso	Bridge of Americas	16,129	812	240,369	124	10,404	4,487	152,466
El Paso	Ysleta Bridge	53,240	0	198,831	0	0	0	166,014
El Paso	Stanton St DCL	0	0	133,379	0	0	0	0
El Paso	Ysleta DCL	0	0	108,208	0	0	0	0
Presidio		806	130	56,539	0	0	0	25,946
Boquillas		0	0	0	0	0	0	709
Serna/Tornillo		0	0	28,161	0	0	0	3,093
Serna/Tornillo	Ft Hancock	0	0	9,508	0	0	0	273
Columbus	Columbus	2,138	0	31,132	0	0	0	25,529
Columbus	Antelope Wells	0	*121	950	0	0	0	0
Santa Teresa		11,922	22	49,664	0	0	0	16,532

*Antelope Wells numbers are for passenger vans processed

September 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	930	183,319	0	0	0	341,846
El Paso	Bridge of Americas	15,080	675	252,480	127	8,223	3,086	131,396
El Paso	Ysleta Bridge	50,428	0	221,684	0	0	0	156,242
El Paso	Stanton St DCL	0	0	134,221	0	0	0	0
El Paso	Ysleta DCL	0	0	107,839	0	0	0	0
Presidio		833	125	56,328	0	0	0	20,988
Boquillas		0	0	0	0	0	0	1,001
Serna/Tornillo		0	0	25,901	0	0	0	3,654
Serna/Tornillo	Ft Hancock	0	0	9,581	0	0	0	268
Columbus	Columbus	2,054	0	30,609	0	0	0	24,870
Columbus	Antelope Wells	0	*98	938	0	0	0	0
Santa Teresa		11,377	16	43,162	0	0	0	12,113

*Antelope Wells numbers are for passenger vans processed

October 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	839	191,494	0	0	0	361,221
El Paso	Bridge of Americas	16,498	697	265,834	115	7,278	2,571	147,038
El Paso	Ysleta Bridge	55,251	0	214,485	0	0	0	159,779
El Paso	Stanton St DCL	0	0	146,029	0	0	0	0
El Paso	Ysleta DCL	0	0	115,628	0	0	0	0
Presidio		1,054	142	56,209	0	0	0	19,401
Boquillas		0	0	0	0	0	0	1,700
Serna/Tornillo		0	0	27,883	0	0	0	4,021
Serna/Tornillo	Ft Hancock	0	0	9,676	0	0	0	268
Columbus	Columbus	2,890	0	30,318	0	0	0	23,592
Columbus	Antelope Wells	0	*0	931	0	0	0	0
Santa Teresa		12,672	13	42,174	0	0	0	11,661

*Antelope Wells numbers are for passenger vans processed

November 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	742	175,505	0	0	0	330,171
El Paso	Bridge of Americas	12,839	760	259,756	112	7,202	2,346	134,592
El Paso	Ysleta Bridge	52,063	0	203,584	0	0	0	149,073
El Paso	Stanton St DCL	0	0	133,865	0	0	0	0
El Paso	Ysleta DCL	0	0	105,061	0	0	0	0
Presidio		1,022	142	54,667	0	0	0	21,686
Boquillas		0	0	0	0	0	0	3,498
Serna/Tornillo		0	0	26,583	0	0	0	3,128
Serna/Tornillo	Ft Hancock	0	0	9,664	0	0	0	242
Columbus	Columbus	1,868	0	27,981	0	0	0	21,435
Columbus	Antelope Wells	0	*95	1,070	0	0	0	0
Santa Teresa		10,924	20	43,748	0	0	0	12,416

*Antelope Wells numbers are for passenger vans processed

December 2019

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	Paso del Norte	0	1,007	190,826	0	0	0	325,436
El Paso	Bridge of Americas	11,379	978	284,027	97	5,258	2,826	154,034
El Paso	Ysleta Bridge	46,744	0	221,027	0	0	0	161,469
El Paso	Stanton St DCL	0	0	135,170	0	0	0	0
El Paso	Ysleta DCL	0	0	108,080	0	0	0	0
Presidio		985	182	58,203	0	0	0	38,527
Boquillas		0	0	0	0	0	0	2,467
Serna/Tornillo		0	0	29,660	0	0	0	3,099
Serna/Tornillo	Ft Hancock	0	0	10,279	0	0	0	262
Columbus	Columbus	1,490	0	30,398	0	0	0	22,675
Columbus	Antelope Wells	0	*121	1,551	0	0	0	0
Santa Teresa		10,113	20	53,942	0	0	0	23,104

*Antelope Wells numbers are for passenger vans processed

[Attachment B: Jan. 2020 Field Statistics]

U.S. Department of Homeland Security
9400 Viscount
El Paso, TX 79925

U.S. Customs and Border Protection

February 25, 2020

To: Stakeholders and interested parties

From: Ruben Jauregui
Director, Communication Management Office
Public Affairs and Community Liaison
El Paso Field Office
El Paso, Texas

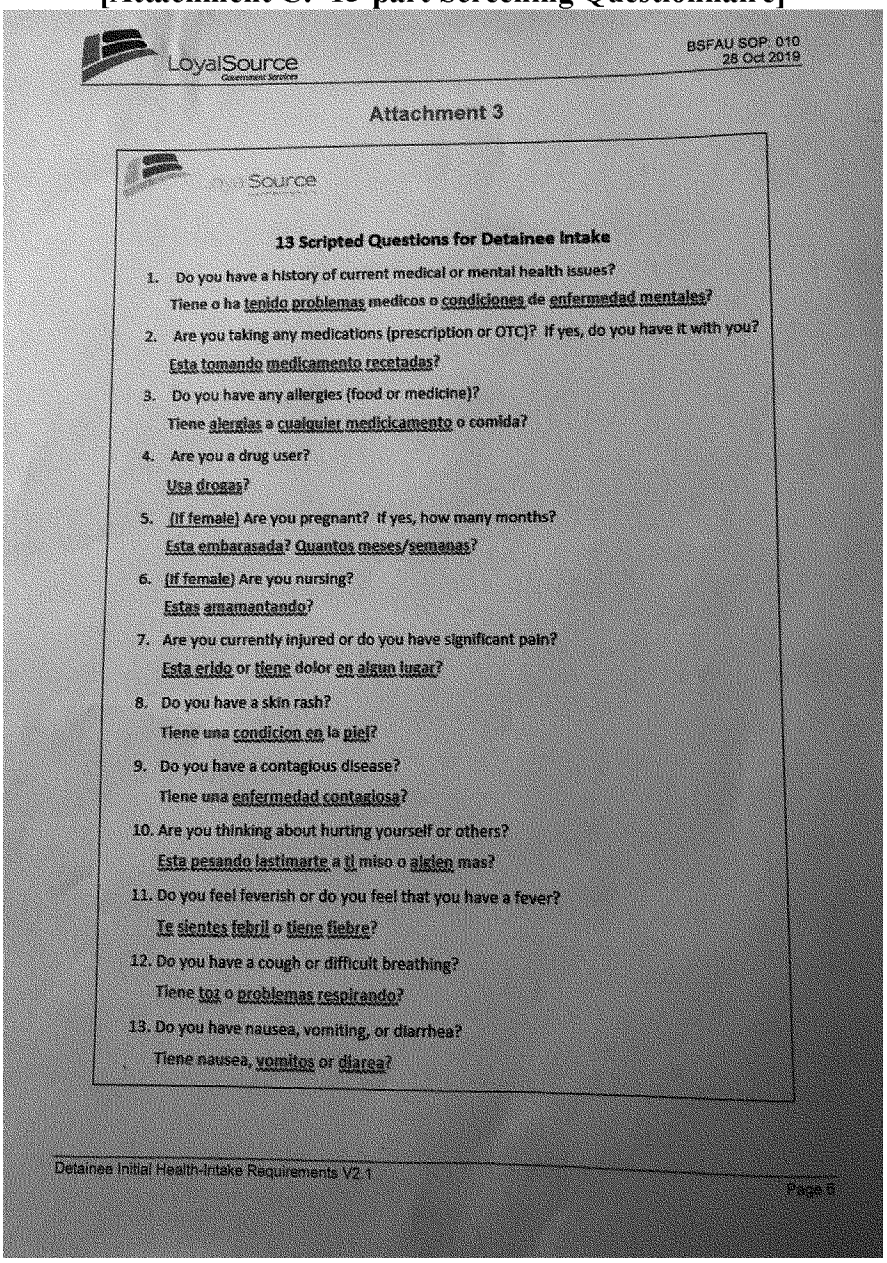
Subject: El Paso Field Office Traffic Summary Report January 2020

January 2020

		Trucks	Buses	POV's	Trains	Empty Rail containers	Full Rail Containers	Pedestrians
El Paso	**Paso del Norte**	0	1,047	186,475	0	0	0	294,921
El Paso	**Bridge of Americas**	13,612	810	279,016	91	4,090	1,481	127,497
El Paso	**Ysleta Bridge**	53,785	0	219,982	0	0	0	137,015
El Paso	**Stanton St DCL**	0	0	134,574	0	0	0	0
El Paso	**Ysleta DCL**	0	0	104,067	0	0	0	0
Presidio		967	128	56,535	0	0	0	25,047
Boquillas		0	0	0	0	0	0	2.585
Serna/Tornillo		0	0	24,937	0	0	0	2,929
Serna/Tornillo	**Ft Hancock**	0	0	9,246	0	0	0	169
Columbus	**Columbus**	1,032	0	28,629	0	0	0	24,479
Columbus	**Antelope Wells**	0	*118	1,254	0	0	0	0
Santa Teresa		11,886	31	46,478	0	0	0	14,731

***Antelope Wells numbers are for passenger vans processed**

[Attachment C: 13-part Screening Questionnaire]



LoyalSource
Government Services

BSFAU SOP 010
28 Oct 2019

Attachment 3

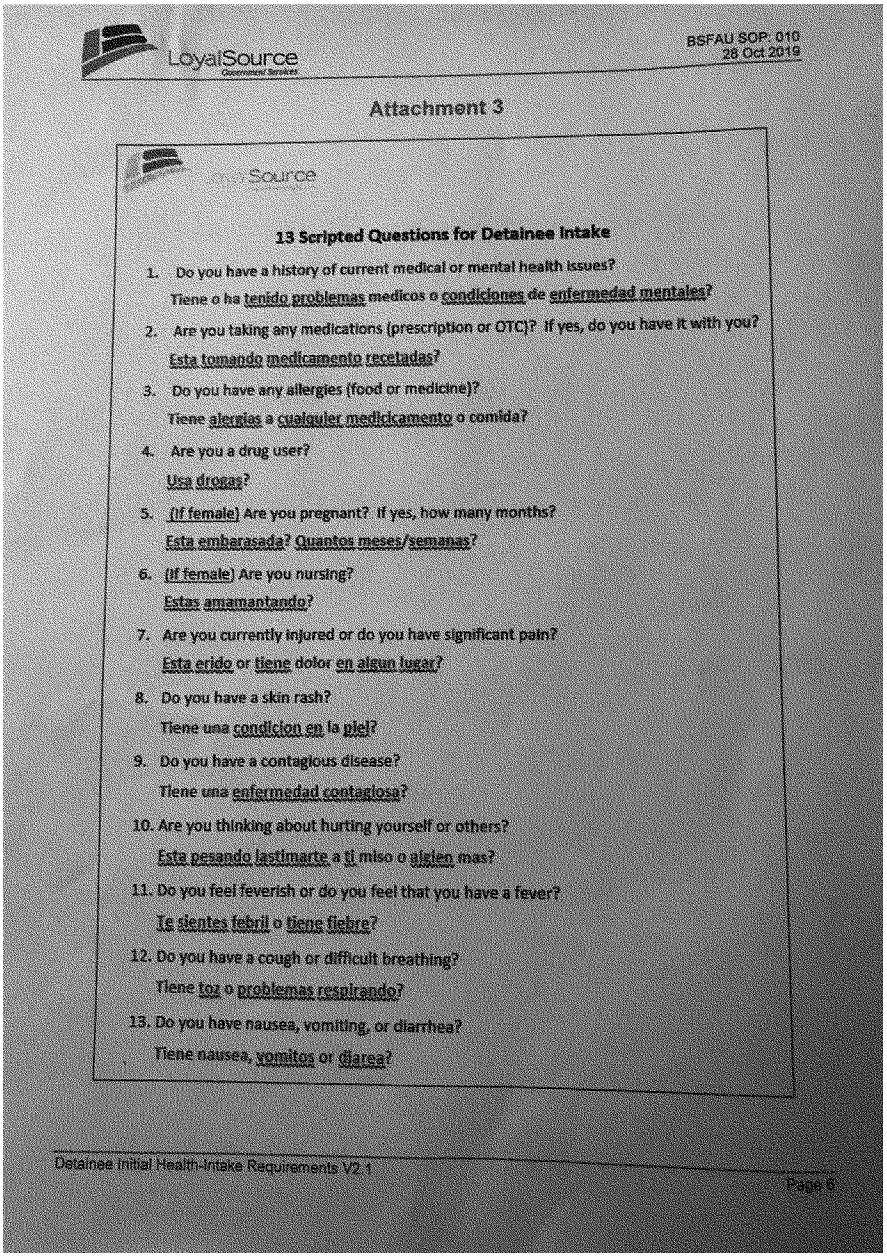
LoyalSource

13 Scripted Questions for Detainee Intake

1. Do you have a history of current medical or mental health issues?
   Tiene o ha tenido problemas medicos o condiciones de enfermedad mentales?
2. Are you taking any medications (prescription or OTC)? If yes, do you have it with you?
   Esta tomando medicamento recetadas?
3. Do you have any allergies (food or medicine)?
   Tiene alergias a cualquier medicamento o comida?
4. Are you a drug user?
   Usa drogas?
5. (If female) Are you pregnant? If yes, how many months?
   Esta embarasada? Quantos meses/semanas?
6. (If female) Are you nursing?
   Estas amamantando?
7. Are you currently injured or do you have significant pain?
   Esta erido or tiene dolor en algun lugar?
8. Do you have a skin rash?
   Tiene una condicion en la piel?
9. Do you have a contagious disease?
   Tiene una enfermedad contagiosa?
10. Are you thinking about hurting yourself or others?
    Esta pesando lastimarte a ti miso o alglen mas?
11. Do you feel feverish or do you feel that you have a fever?
    Te sientes febril o tiene fiebre?
12. Do you have a cough or difficult breathing?
    Tiene toz o problemas respirando?
13. Do you have nausea, vomiting, or diarrhea?
    Tiene nausea, vomitos or diarea?

Detainee Initial Health-Intake Requirements V2.1

Page 6



LoyalSource
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28 Oct 2019

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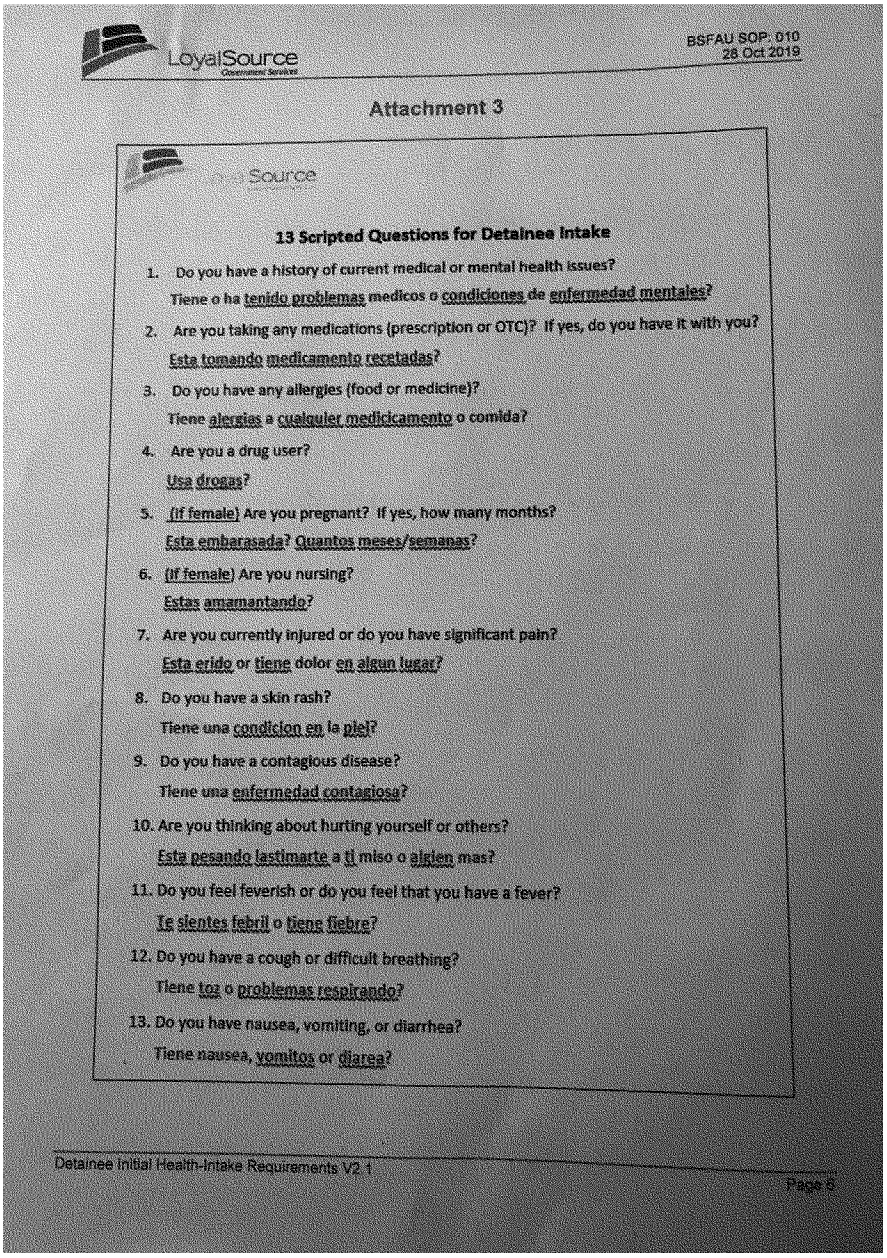
Detainee Initial Health-Intake Requirements V2.1

Page 6



LoyalSource Government Services

BSFAU SOP: 010
28 Oct 2019

Attachment 3

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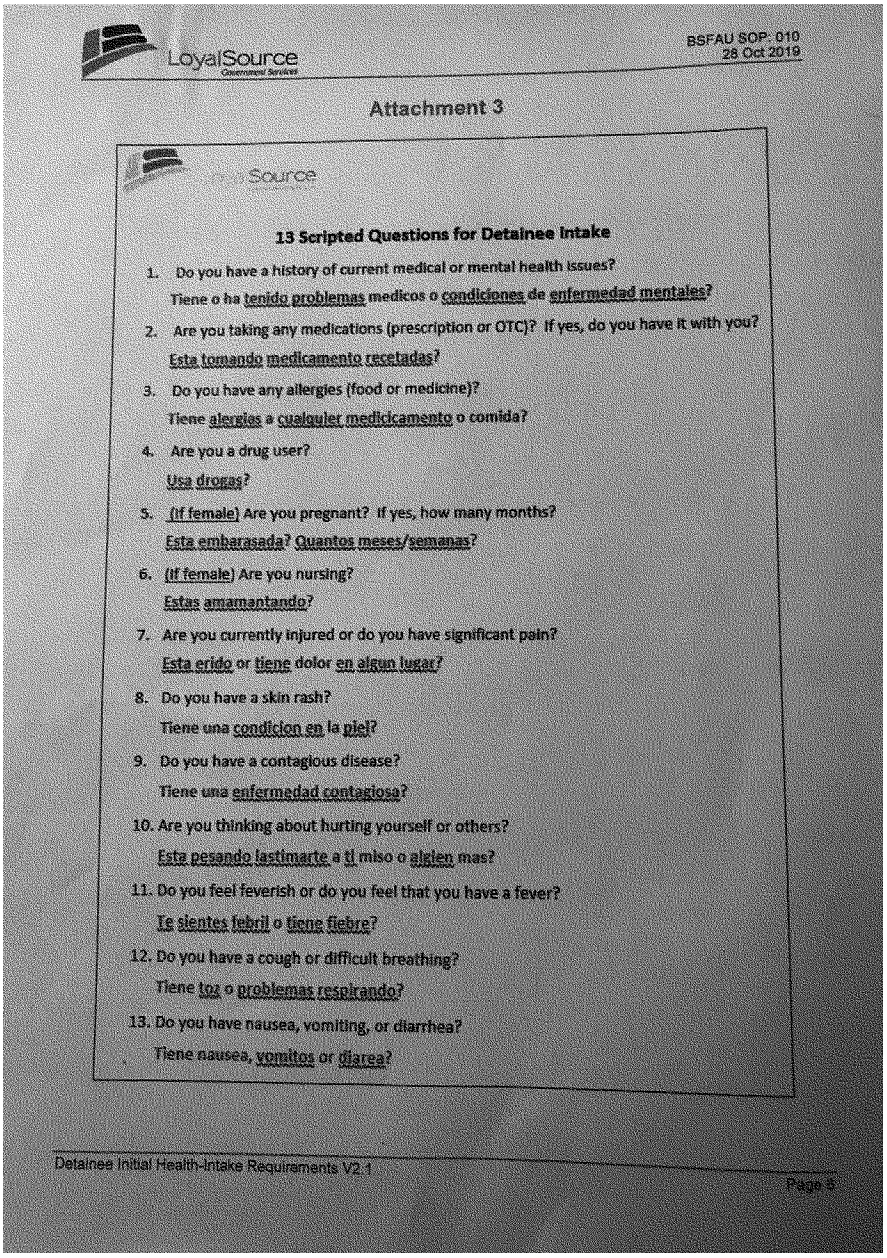
Detainee Initial Health-Intake Requirements V2.1

Page 8



LoyalSource
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Detainee Initial Health-Intake Requirements V2.1

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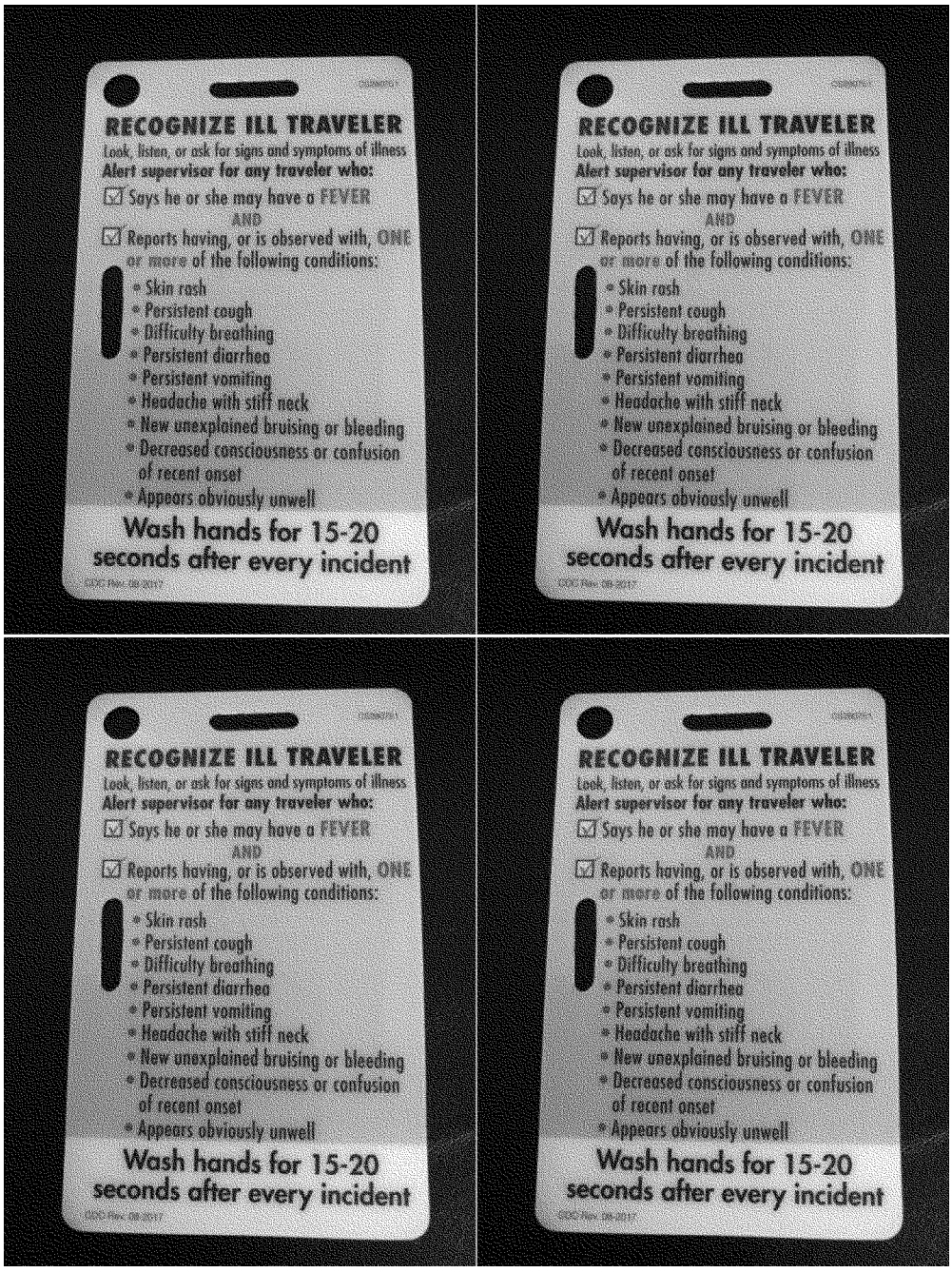
[Attachment D: RING Card]

(front)

CDC
RECOGNIZE ILL TRAVELER
• See back of card
ISOLATE
• Separate ill person ≥6 feet from others
NOTIFY
• If situation is life-threatening, call EMS
• Alert supervisor
• Supervisor contacts CDC Quarantine Station
GIVE SUPPORT
• Follow instructions of supervisor and CDC Quarantine Station staff
CDC El Paso Quarantine Station
(866) 638-9753 24/7
www.cdc.gov/quarantine

(back)


RECOGNIZE ILL TRAVELER
Look, listen, or ask for signs and symptoms of illness
Alert supervisor for any traveler who:
☑ Says he or she may have a FEVER
AND
☑ Reports having, or is observed with, ONE or more of the following conditions:
• Skin rash
• Persistent cough
• Difficulty breathing
• Persistent diarrhea
• Persistent vomiting
• Headache with stiff neck
• New unexplained bruising or bleeding
• Decreased consciousness or confusion of recent onset
• Appears obviously unwell
Wash hands for 15-20 seconds after every incident
CDC Rev. 08-2017
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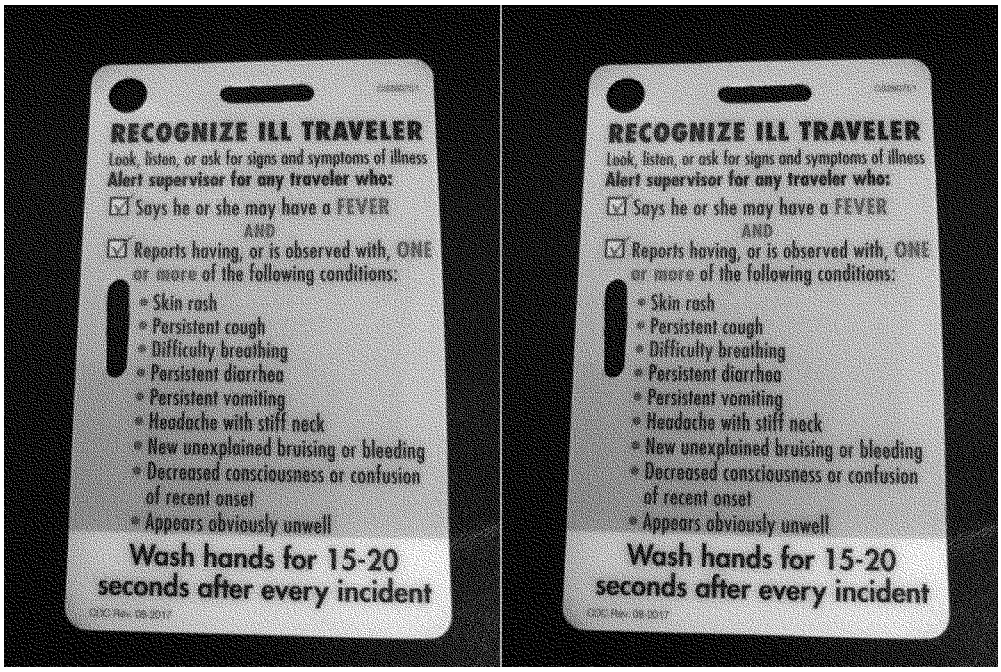
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CDC Rev. 08-2017

EXHIBIT 2

U.S. Border Patrol (USBP) - Apprehensions (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
ALBANIA	12	1
ALGERIA	0	1
ARGENTINA	4	2
ARMENIA	1	0
BANGLADESH	420	1
BELGIUM	0	1
BOLIVIA	10	1
BRAZIL	6,248	11
BULGARIA	1	1
BURKINA FASO	1	1
CAMBODIA	0	1
CAMEROON	20	0
CANADA	2	33
CHILE	341	0
CHINA (PEOPLE'S REPUBLIC OF)	1,157	18
COLOMBIA	204	35
COSTA RICA	21	0
DEM REP OF THE CONGO	149	0
DOMINICAN REPUBLIC	160	12
ECUADOR	7,027	35
FRENCH GUIANA	1	0
GERMANY	0	1
GUADELOUPE	2	0
HONDURAS	19,493	87
INDIA	805	111
INDONESIA	1	1
IRAN	5	1
IRAQ	1	1
IRELAND	2	0
ISRAEL	4	3
ITALY	6	1
JAMAICA	1	7
JAPAN	0	1
JORDAN	7	3
KOREA	0	1
KUWAIT	1	0
MALAYSIA	1	1

U.S. Border Patrol (USBP) - Apprehensions (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
MEXICO	80,130	707
MOLDOVA	0	1
NEPAL	77	0
NIGERIA	9	8
NORWAY	0	1
PAKISTAN	61	3
PANAMA	11	1
PARAGUAY	1	1
PERU	295	1
PHILIPPINES	0	3
POLAND	0	3
ROMANIA	151	43
RUSSIA	6	0
SENEGAL	1	1
SINGAPORE	1	0
SOUTH AFRICA	2	2
SOUTH KOREA	1	8
SPAIN	5	7
SRI LANKA	196	3
SWEDEN	1	0
THAILAND	0	1
TOGO	2	1
TUNISIA	0	1
TURKEY	46	1
UKRAINE	2	3
UNITED KINGDOM	2	10
VIETNAM	197	2
TOTAL	**117,305**	**1,185**

Source: End of Month Report

EXHIBIT 3

Office of Field Operations (OFO) - Inadmissible Aliens (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
AFGHANISTAN	0	23
ALBANIA	0	13
ALGERIA	0	349
ANDORRA	0	1
ARGENTINA	4	7
ARMENIA	108	1
AUSTRALIA	4	53
AUSTRIA	1	6
AZERBAIJAN	8	9
BANGLADESH	3	79
BELARUS	11	5
BELGIUM	15	39
BHUTAN	0	9
BOLIVIA	3	2
BOSNIA-HERZEGOVINA	0	6
BRAZIL	152	318
BULGARIA	1	14
BURKINA FASO (UPPER VOLTA)	10	20
CAMBODIA	0	3
CAMEROON	1,025	69
CANADA	25	9,693
CHILE	21	47
CHINA (PEOPLE'S REPUBLIC OF)	500	1,378
TAIWAN	0	21
COLOMBIA	83	151
COSTA RICA	8	3
CROATIA	0	10
CYPRUS	0	4
CZECH REPUBLIC	1	7
DEMOCRATIC REPUBLIC OF CONGO (ZAIRE)	171	29
DENMARK	1	16
DOMINICAN REPUBLIC	4	25
ECUADOR	156	14

Office of Field Operations (OFO) - Inadmissible Aliens (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
EGYPT	2	124
ESTONIA	0	1
FINLAND	0	5
FRANCE	6	802
GEORGIA	59	2
GERMANY	1	88
GREECE	1	19
HONDURAS	1,343	32
HONG KONG, PRC	0	8
HUNGARY	1	16
INDIA	22	2,135
INDONESIA	1	17
IRAN	3	1,061
IRAQ	2	63
IRELAND	0	27
ISRAEL	5	58
ITALY	6	50
JAMAICA	24	120
JAPAN	2	33
JORDAN	1	28
KUWAIT	3	1
LATVIA	1	1
LEBANON	2	54
LITHUANIA	2	8
LUXEMBOURG	0	2
MACAO (MACAU), PRC	0	1
MACEDONIA (SKOPJE)	0	2
MALAYSIA	0	9
MALTA AND GOZO	0	2
MEXICO	29,713	245
MOLDOVA	0	9
MOROCCO	1	350
NEPAL	0	6
NETHERLANDS	0	17

Office of Field Operations (OFO) - Inadmissible Aliens (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
NEW ZEALAND	0	20
NIGERIA	0	182
NORWAY	3	7
OMAN	1	2
PAKISTAN	5	160
PANAMA	4	1
PARAGUAY	0	2
PERU	46	15
PHILIPPINES	0	554
POLAND	1	66
PORTUGAL	0	57
REPUBLIC OF CONGO (BRAZZAVILLE)	40	9
REPUBLIC OF SOUTH AFRICA	6	21
ROMANIA	9	39
RUSSIA	340	101
SAUDI ARABIA	4	14
SENEGAL	5	56
SERBIA	0	4
SINGAPORE	0	6
SLOVAKIA	0	2
SLOVENIA	0	2
SOUTH KOREA	12	178
SPAIN	19	66
SRI LANKA	0	28
SWEDEN	0	27
SWITZERLAND	1	20
THAILAND	0	6
TOGO	6	20
TUNISIA	0	274
TURKEY	38	50
UKRAINE	70	130
UNITED ARAB EMIRATES	1	2
UNITED KINGDOM	7	148
VIETNAM	7	77

Office of Field Operations (OFO) - Inadmissible Aliens (FY20TD-Feb.)		
Country of Citizenship	**Southwest Border**	**Northern Border**
TOTAL	**34,141**	**20166**

Source: SBO Data via End of Month Report; NBO Data via CBP Data Warehouse as of 3/3/2020

BILLING CODE 4163–18–C

Authority

The authority for these orders is Sections 362 and 365 of the Public Health Service Act (42 U.S.C. 265, 268).

Dated: March 20, 2020.

Robert K. McGowan

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2020–06327 Filed 3–23–20; 3:15 pm]

BILLING CODE 4163–18–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—EH–20–001, Environmental Health Specialists Network (EHS-Net)—Practice based research to improve food safety.

Date: June 3–4, 2020.

Time: 8:30 a.m. to 5:00 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Mikel Walters, Ph.D., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–06272 Filed 3–25–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0001]

Preparation for International Cooperation on Cosmetics Regulation 14th Annual Meeting; Public Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the cancellation of following public meeting entitled ''International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR–14 Meeting.'' The purpose of the public meeting was to invite public input on various topics pertaining to the regulation of cosmetics.

DATES: The public meeting was to be held on April 14, 2020, from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting was to be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5001 Campus Dr., Wiley Auditorium (first floor), College Park, MD 20740.

FOR FURTHER INFORMATION CONTACT: Deborah Smegal, Office of Cosmetics and Colors, Food and Drug Administration, 5001 Campus Dr. (HFS–100), College Park, MD 20740, 240–402–1818, *Deborah.Smegal@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA, like other government agencies, is taking the necessary steps to ensure the Agency is prepared to continue our vital public health mission in the event that our day-to-day operations are impacted by the COVID–19 public health emergency. Therefore, we are canceling or postponing all non-essential meetings through the month of April. We will reassess on an ongoing basis for future months.

Accordingly, the FDA public meeting entitled, ''International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR—14 Meeting'' announced in the **Federal Register** of March 3, 2020 (85 FR 12569), is canceled. Additionally, we will be closing the docket to public comments, since the purpose of the docket was to obtain information for the FDA public meeting and to help FDA prepare for the ICCR–14 meeting. Thus, because we are canceling the FDA public meeting, public comments are no longer necessary.

As of March 20, 2020, the status of the ICCR–14 meeting itself remains to be determined.

Please contact Deborah Smegal in FDA's Office of Cosmetics and Colors (See **FOR FURTHER INFORMATION CONTACT**) with questions.

Dated: March 20, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–06280 Filed 3–25–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request: Office for the Advancement of Telehealth Outcome Measures, OMB No. 0915–0311—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 26, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Office for the Advancement of Telehealth Outcome Measures, OMB No. 0915–0311—Revision.

Abstract: In order to help carry out its mission, the Office for the Advancement of Telehealth (OAT) created a set of performance measures that grantees can use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data.

Need and Proposed Use of the Information: As required by the Government Performance and Review Act of 1993, all federal agencies must develop strategic plans describing their overall goal and objectives. The Office for the Advancement of Telehealth has worked with its grantees to develop performance measures to use to evaluate and monitor the progress of the grantees. Grantee goals are to improve access to needed services, reduce rural practitioner isolation, improve health system productivity and efficiency, and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring website. New measures are being added to the Telehealth Network Grant Program to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures speak to OAT's progress toward meeting the goals, specifically telehealth services delivered through Emergency Departments.

Likely Respondents: Telehealth Network Grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement Measurement System (PIMS) ..	29	1	29	7	203
Total	29	.....	29	.....	203

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–06352 Filed 3–25–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee 2020 Schedule—Revised; Meeting

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS.

ACTION: Notice; public meeting dates.

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with section 4003(e) of the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the National Coordinator for Health Information Technology (National Coordinator). The HITAC will hold public meetings throughout 2020. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Lauren Richie, Designated Federal Officer, at *Lauren.Richie@hhs.gov,* or (202) 205–7674.

SUPPLEMENTARY INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). The HITAC will be governed by the provisions of the Federal Advisory

Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

Composition

The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary
  - 1 of whom shall be appointed to represent the Department of Health and Human Services and
  - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives; and
- Other members are appointed by the Comptroller General of the United States.

Members will serve for one-, two-, or three-year terms. All members may be reappointed for a subsequent three-year term. Each member is limited to two three-year terms, not to exceed six years of service. After establishment, members shall be appointed for a three-year term. Members serve without pay, but will be provided per-diem and travel costs for committee services.

Recommendations

The HITAC recommendations to the National Coordinator are publicly available at *https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it.*

Public Meetings

The revised schedule of meetings to be held in 2020 is as follows:

- January 15, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC 20005
- February 19, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- March 18, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- March 26, 2020 from approximately 10:30 a.m. to 1:30 p.m./Eastern Time (virtual meeting)
- April 15, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- May 20, 2020 from approximately 9:30 a .m. to 2:30 p.m./Eastern Time (virtual meeting)
- June 17, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- September date TBD
- October 21, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- November 10, 2020 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)

All meetings are open to the public. Additional meetings may be scheduled as needed. For web conference instructions and the most up-to-date information, please visit the HITAC calendar on the ONC website, *https://www.healthit.gov/topic/federal-advisory-committees/hitac-calendar.*

Contact Person for Meetings: Lauren Richie, *lauren.richie@hhs.gov*. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Lauren Richie for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the National Coordinator on the topics of interoperability, privacy and security, and patient access. In addition, the committee will also address any administrative matters and hear periodic reports from ONC. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its website prior to the meeting, the material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's website after the meeting, at *http://www.healthit.gov/hitac.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting.

Persons attending ONC's HITAC meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its HITAC meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lauren Richie at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. No. 92–463 , 5 U.S.C., App. 2).

Dated: March 19, 2020.

Lauren Richie,

Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2020–06345 Filed 3–25–20; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice To Announce Request for Information on the Development of the National Institute of Diabetes and Digestive and Kidney Diseases Strategic Plan

AGENCY: National Institutes of Health, HHS.

ACTION: Request for Information.

SUMMARY: This Request for Information (RFI) is intended to gather broad public input to assist the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) in developing the NIDDK Strategic Plan. NIDDK invites input from: The scientific research community; patients and caregivers; health care providers and health advocacy organizations; scientific and professional organizations; federal agencies; and other stakeholders, including interested members of the public. Organizations are strongly encouraged to submit a single response that reflects the views of their organization and their membership as a whole.

DATES: Comments must be received by 11:59:59 p.m. (ET) on May 18, 2020 to ensure consideration.

ADDRESSES: All comments must be submitted electronically on the submission website, available at *https://grants.nih.gov/grants/rfi/rfi.cfm?ID=106.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to: Lisa

Gansheroff, *NIDDKstrategicplan@nih.gov,* 301.496.6623.

SUPPLEMENTARY INFORMATION: In accordance with the 21st Century Cures Act, NIH is required to regularly update their strategic plans. The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) is embarking on an Institute-wide strategic planning process. The goal of the process is to develop a broad vision for accelerating research into the causes, prevention, and treatment of diseases and conditions within the Institute's mission. This overarching trans-NIDDK Strategic Plan will complement NIDDK's disease-specific planning efforts. The strategic plan will have a 5-year time horizon but will also include planning for longer term efforts that could be initiated within this time frame.

A critical component of this strategic planning process is to seek input from the research and patient communities and others who have an interest in research within the mission of NIDDK. As part of that approach, the purpose of this Request for Information (RFI) is to invite input on opportunities and strategies to advance NIDDK's mission.

NIDDK will use responses collected as part of this RFI to inform the development of the Institute-wide Strategic Plan, which will be posted in draft form for additional public comment.

NIDDK conducts and supports biomedical research and research training and disseminates science-based information on: Diabetes and other endocrine and metabolic diseases; digestive diseases, including liver, gastrointestinal, and other diseases; nutritional disorders; obesity; and kidney, urologic, and hematologic diseases, to improve people's health and quality of life. Based on this mission, NIDDK has formulated the following broad themes for input, as a starting point for the planning process:

Themes for Input

- Advancing understanding of biological pathways and environmental contributors to health and disease.
- Advancing progress in pivotal clinical studies and trials for prevention, treatment, and cures in diverse populations.
- Advancing dissemination and implementation research on strategies to identify, adapt, scale-up, and integrate evidence-based interventions in diverse settings and populations.
- Promoting participant engagement—including patients and other participants as true partners in research.
- Advancing research training and career development to promote a talented, diverse biomedical research workforce.
- Promoting innovation, rigor and reproducibility in research, partnerships, communicating research results, and other critical efforts as part of efficient and effective stewardship of public resources.

NIDDK invites input from: The scientific research community; patients and caregivers; health care providers and health advocacy organizations; scientific and professional organizations; federal agencies; and other stakeholders, including interested members of the public.

NIDDK seeks input on any of the broad themes above. Your comments could include any of the following: Research opportunities for the themes highlighted above; innovative strategies to advance research progress; the challenges to progress in these areas; emerging trends, advances, technologies, analytic strategies, challenges in big data science, and perspectives that NIDDK should consider in this planning process; potential approaches to gauge research progress and success. Please also comment on any other topic that you find relevant to the development of the NIDDK Institute-wide Strategic Plan.

Organizations are strongly encouraged to submit a single response that reflects the views of their organization and membership as a whole.

Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. Individual feedback will not be provided to any responder. The Government reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

NIDDK looks forward to your input and we hope that you will share this RFI with your colleagues.

Dated: March 20, 2020.

Bruce T. Roberts,

Health Science Policy Analyst, National Institute of Diabetes and Digestive and Kidney Diseases.

[FR Doc. 2020–06271 Filed 3–25–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Postponement of the April 2020 Customs Broker's License Examination

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) has postponed the customs broker's license examination scheduled for April 1, 2020. The examination is postponed due to the unprecedented situation related to the coronavirus (COVID–19), which is having a nationwide impact on CBP's ability to conduct the examination.

DATES: The customs broker's license examination scheduled for April 1, 2020 is postponed.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry, Office of Trade, (202) 325–6532, or *brokermanagement@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of brokers' licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations

regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 of the U.S. Customs and Border Protection (CBP) regulations (19 CFR 111.11) sets forth the basic requirements for a broker's license, and in paragraph (a)(4) of that section provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on the examination.

Section 111.13 of the CBP regulations (19 CFR 111.13) sets forth the requirements and procedures for the examination for an individual broker's license and states that the customs broker's license examinations will be given on the fourth Wednesday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

The unprecedented situation related to the coronavirus (COVID–19) has a nationwide impact on CBP's ability to conduct the customs broker's license examination. Testing facilities are being closed beyond CBP's control, and best practices for social distancing and limiting the size of gatherings militate against CBP attempting to establish alternative testing formats and sites. Accordingly, this document announces that the April 1, 2020 exam is postponed, and that the October exam date is still scheduled for October 8, 2020, as previously announced in a **Federal Register** notice (84 FR 71440) published on December 27, 2019. If another test date is identified, CBP will publish a notice in the **Federal Register** announcing that new date. In addition, CBP will continue to provide information on *www.CBP.gov.*

Dated: March 19, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–06407 Filed 3–24–20; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2020–0013]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; Notice of Federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, April 15, 2020, in Washington, DC. The meeting will be open to the public via webinar only. There is no on-site, in-person option for this quarterly meeting.

DATES: The COAC will meet on Wednesday, April 15, 2020, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than April 14, 2020.

ADDRESSES: The meeting will be held via webinar. The webinar link and conference number will be provided to all registrants by 10:00 a.m. EDT on April 15, 2020. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection (CBP), at (202) 344–1440 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290; or Ms. Valarie M. Neuhart, Acting Executive Director and Designated Federal Officer at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: For members of the public who plan to participate via webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=177* by 5:00 p.m. EDT on April 14, 2020. For members of the public who are pre-registered to attend and later need to cancel a webinar registration, please do so online at *https://teregistration.cbp.gov/cancel.asp?w=177* by April 14, 2020.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below. Comments must be submitted in writing no later than April 14, 2020, and must be identified by Docket No. USCBP–2020–0013, and may be submitted by one (1) of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: tradeevents@cbp.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290, Attention Florence Constant-Gibson.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (USCBP–2020–0013) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2020–0013. To submit a comment, click the ''Comment Now!'' button located on the top right-hand side of the docket page.

There will be multiple public comment periods held during the meeting on April 15, 2020. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Intelligent Enforcement Subcommittee will provide updates and recommendations from the working groups under their jurisdiction for COAC's consideration. The Intellectual Property Rights (IPR) Working Group will provide information regarding improvements in the eRecordation process and data sharing. The IPR Working Group will also provide updates and recommendations regarding the Department of Homeland

Security Report on Combatting Trafficking in Counterfeit and Pirated Goods and the Executive Order on Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights. The Anti-Dumping and Countervailing Duty (AD/CVD) and Bond Working Groups will provide updates on risk-based bonding as well as bonds for Foreign Trade Zones and pipeline operators. The Forced Labor Working Group will provide updates and recommendations on the proof of admissibility for forced labor allegations, industry collaboration, and statutory guidance related to disclosure and mitigation.

2. The Secure Trade Lanes Subcommittee will provide updates on the Trusted Trader Working Group's activities specific to Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance implementation and new forced labor program requirements. The subcommittee will also provide an analysis of the In-Bond processes with a focus on specific ''Pain Point'' areas by mode, that are being developed for potential solutions and to create greater efficiency and present some recommendations for deliberation. Additionally, the Export Modernization Working Group will provide updates of export data elements and opportunities for export process efficiencies. The subcommittee will also report on the activities of the Remote and Autonomous Cargo Processing Working Group.

3. The Next Generation Facilitation Subcommittee will provide an update on the progress on the Emerging Technologies Working Group's various initiatives, including the recent completion of the IPR Blockchain Proof of Concept assessment. The One U.S. Government Working Group will discuss progress on the Global Business Identifier and working group priorities. There will be a subcommittee update on the progress of the Unified Entry Processes Working Group's work towards an operational framework and the results of mapping out perceived deficiencies in the current entry process.

4. The Rapid Response Subcommittee will provide updates on the newly formed U.S.–Mexico–Canada Agreement (USMCA) Working Group, the work that has been completed by the Broker Continuing Education Taskforce, and discuss its opinion as to why continuing education is important and should be mandated.

Meeting materials will be available by April 13, 2020, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: March 20, 2020.

Valarie M. Neuhart,

Acting Executive Director, Office of Trade Relations.

[FR Doc. 2020–06261 Filed 3–25–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N054; FRES48010811290 XXX]

Endangered and Threatened Species; Receipt of Incidental Take Permit Application and Habitat Conservation Plan; Availability of Environmental Assessment; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is extending the public comment period for the draft environmental assessment (DEA) and habitat conservation plan (HCP) in support of an incidental take permit (ITP) application received from the Pacific Gas and Electric Company (applicant).

DATES: The comment period for the DEA and HCP addressing the ITP application for incidental take, which published on March 2, 2020 (85 FR 12319), is extended by 15 days. Please submit your written comments by 11:59 p.m. PST on April 16, 2020.

ADDRESSES: *Document availability:* To view the DEA and HCP, go to the U.S. Fish and Wildlife Service's Sacramento Field Office website at *http://www.fws.gov/sacramento.*

Submitting comments: You may submit comments by one of the following methods. If you have already submitted a comment, you need not resubmit it.

- *Fax:* (916) 414–6713.
- *U.S. mail or hand-delivery:* Eric Tattersall, Assistant Field Supervisor; U.S. Fish and Wildlife Service; Sacramento Fish and Wildlife Office; 2800 Cottage Way, W–2605; Sacramento, CA 95825.

We request that you submit comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Joshua Emery, Senior Biologist, Conservation Planning Division; or Eric Tattersall, Assistant Field Supervisor, at the Sacramento Fish and Wildlife Office address above or by telephone at (916) 414–6600. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) received an incidental take permit (ITP) application on December 2, 2019, from the Pacific Gas and Electric Company in accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). For more information, see the March 2, 2020 (85 FR 12319), notice.

We are extending the public comment period on the DEA and HCP documents (see **DATES** and **ADDRESSES**).

Authority

We issue this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Jennifer Norris,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2020–06269 Filed 3–25–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201D0102DR/DS5A300000/DR.5A311.IA000118]

Land Acquisitions; Catawba Indian Nation, Kings Mountain Parcel, North Carolina

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire 16.57 acres, more or less, of land in trust for the Catawba Indian Nation for gaming and other purposes on March 12, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: On March 12, 2020, the Assistant Secretary—Indian Affairs made a final agency determination to accept land into trust for the Catawba Indian Nation under the authority of the Indian Reorganization

Act of June 18, 1934, 25 U.S.C. 5108. The Assistant Secretary—Indian Affairs also determined that the Catawba Indian Nation meets the requirements of the Indian Gaming Regulatory Act's ''Restored Lands'' exception, 25 U.S.C. 2719 (b)(1)(A)(B)(iii), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to Kings Mountain Parcel, 16.57 acres, more or less, in the name of the United States of America in Trust for Catawba Indian Nation upon fulfillment of all Departmental requirements. The 16.57 acres, more or less, are described as follows:

Legal Description of Property

Beginning on a concrete right of way monument having NAD83 NC State Plane Grid Coordinates N: 536550.60 USFT and E: 1292093.25 USFT and being located N 11°18′59″ W 637.68′ (Horizontal Ground Distance) from NCGS ''Dixon'' having NAD83 NC State Plane Grid Coordinates N: 535925.42 USFT and E: 1292218.36 USFT; running thence S 35°20′37″ W 83.44′ to a concrete right of way monument; thence along an arc of curve to the left having a radius of 906.51′, an arc length of 357.87′, a chord bearing S 68°52′34″ W and a chord length of 355.55′ to a 5/8″ Rebar Set; thence S 57°19′29″ W 498.70′ to a 5/8″ Rebar Set; thence along an arc of curve to the right having a radius of 1344.39′, an arc length of 113.61′, a chord bearing S 59°44′45″ W and a chord length of 113.58′ to a 5/8″ Rebar Set; thence a new line N 23°34′25″ W 751.26′ to a 5/8″ Rebar Set; thence a new line N 66°25′35″ E 1026.64′ to a 5/8″ Rebar Set in the Western Right of Way Line of State Project 8.2800802; thence with the western right of way line N 66°25′35″ E 43.71′ to a 5/8″ Rebar Set; thence S 23°18′33″ E 151.15′ to a ½″ Rebar Found; thence S 23°18′33″ E 93.85′ to a 5/8″ Rebar Set; thence S 67°29′04″ W 19.83′ to a 5/8″ Rebar Set; thence S 23°18′56″ E 237.04′ to a 5/8″ Rebar Set; thence S 17°18′46″ E 150.51′ to the point and place of beginning and containing 16.573 Acres ± and shown as Lot 1 according to a survey by TGS Engineers Dated September 17, 2018.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Dated: March 12, 2020.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–06325 Filed 3–25–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930100 L510100000.ER0000]

Notice of Availability of the Supplement to the Willow Master Development Plan Draft Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Supplement to the Draft Environmental Impact Statement (EIS) for the Willow Master Development Plan (MDP), and by this notice is announcing the opening of the comment period. The BLM is also announcing that it will hold public meetings and a subsistence-related hearing to receive comments on the Supplement to the Draft EIS and the proposed project's potential to impact subsistence resources and activities.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Willow MDP Supplement to the Draft EIS by May 4, 2020. The BLM will hold public meetings and dates, times, and locations will be announced at least 15 days in advance on the project website, as well as through public notices, media releases, social media posts, and mailings.

ADDRESSES: You may submit comments related to the Willow MDP Supplement to the Draft EIS by any of the following methods:

- *Website: http://www.blm.gov/alaska/WillowEIS.*
- *Mail:* Willow DEIS Comments, BLM Alaska State Office, 222 W 7th Ave. #13, Anchorage AK 99513.

Hand Deliver: BLM Alaska State Office, 222 W 7th Ave. #13, Anchorage AK 99513.

You may also request to be added to the mailing list for the EIS. Documents pertaining to this supplement to the Draft EIS may be examined at *http://www.blm.gov/alaska/WillowEIS* or at or at the BLM Alaska State Office, BLM Alaska Public Information Center (Public Room), 222 West 7th Avenue (First Floor), Anchorage, Alaska, or the Arctic District Office, 222 University Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Racheal Jones, Willow EIS Project Manager, telephone: 907–290–0307; email: *rajones@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Jones. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Willow MDP Draft EIS was published on August 23, 2019. The Draft EIS analyzed one No Action Alternative (Alternative A), three action alternatives (Alternatives B, C, and D), and two module delivery options (Options 1 and 2), to support a new development (Project) proposed by ConocoPhillips Alaska, Inc. on Federal oil and gas leases in the northeast area of the National Petroleum Reserve-Alaska. This targeted Supplement to the Draft EIS only addresses additional analysis for three Project components added by the Project proponent: Module delivery Option 3, a constructed freshwater reservoir, and up to three boat ramps for subsistence access.

Section 810 of the Alaska National Interest Lands Conservation Act requires the BLM to evaluate the effects of the alternatives presented in the Willow MDP Draft EIS on subsistence activities, and to hold public hearings if it finds that any alternatives may significantly restrict subsistence users. The preliminary evaluation of subsistence impact indicates that the alternatives analyzed in the Willow MDP Draft EIS and the associated cumulative impacts may significantly restrict subsistence uses for multiple communities along the North Slope. Therefore, the BLM will hold public hearings on subsistence resources and activities. Dates and times will be announced at least 15 days in advance on the project website, as well as through public notices, media releases, social media posts, and mailings.

(Authority: 40 CFR 1506.6(b))

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020–06262 Filed 3–25–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–P040–2020–1711–DT–1000–241A]

Notice of Intent To Amend the Resource Management Plan for the Sonoran Desert National Monument, Arizona, and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Lower Sonoran Field Office, Phoenix, Arizona, intends to prepare a Resource Management Plan (RMP) Amendment with an associated Environmental Assessment (EA) for the Sonoran Desert National Monument (SDNM) to address a court order related to livestock grazing on the SDNM. This notice announces the beginning of the scoping process to solicit public comments to identify issues to be addressed in the RMP Amendment/EA.

DATES: This notice initiates the 30-day public scoping process for the RMP Amendment/EA. Comments on issues may be submitted in writing until April 27, 2020. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. There will be an additional public participation opportunity when the draft EA is available.

ADDRESSES: You may submit comments, issues and planning criteria related to the RMP Amendment/EA addressing livestock grazing in the SDNM by any of the methods outlined below:

- *Internet: https://go.usa.gov/xp8W6*
- *Email: BLM_AZ_PDO_SDNMGrazing@blm.gov*
- *Fax:* 623–580–5623
- *Mail:* BLM, Sonoran Desert National Monument, 21605 North 7th Avenue, Phoenix, AZ 85027

Documents pertinent to this proposal may be examined at the Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Edward J. Kender, Lower Sonoran Field Office Manager, telephone 623–580–5616; address 21605 North 7th Avenue, Phoenix, Arizona 85027; email *ekender@blm.gov.* Contact Mr. Kender to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Lower Sonoran Field Office, Phoenix, Arizona, intends to prepare an RMP Amendment and associated EA addressing a 2016 court order in *Western Watersheds Project* v. *BLM,* 181 F.Supp.3d 673 (D.Ariz. 2016), requiring the compatibility of livestock grazing on the SDNM be reevaluated in a new Land Health Evaluation (LHE) and Grazing Compatibility Analysis (GCA). This notice announces the beginning of the scoping process to identify issues and planning criteria for the RMP Amendment/EA. The planning area is located in Maricopa and Pinal counties, Arizona, and encompasses approximately 252,472 acres of public land. The purpose of the public scoping process is to solicit comments to determine relevant issues that will influence the scope of the EA, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel and include: (1) Direct, indirect, and cumulative impacts from livestock grazing on monument objects and other resources; and (2) Impacts to local economies and livestock operators if the area is made available or unavailable for livestock grazing.

Preliminary planning criteria includes the following: (1) The RMP Amendment will cover BLM-administered public lands within the SDNM north of Interstate 8; (2) The EA will consider a range of reasonable alternatives; (3) The BLM will consider current scientific information, research, new technologies, and resource assessments, monitoring, and coordination; and (4) Decisions in the RMP Amendment will comply as appropriate with all applicable law, regulations, policy and guidance.

You may submit comments on issues in writing by using one of the methods listed in the **ADDRESSES** section above. Comments need to be submitted by the close of the 30-day scoping period.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the alternatives will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the alternatives that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the RMP Amendment/EA as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. In the RMP Amendment/EA, the BLM will address the comments received during scoping and sort them into one of three categories for consideration:

1. Issues to be resolved in the LHE and GCA;
2. Issues to be resolved in the RMP Amendment/EA;
3. Issues beyond the scope of this RMP Amendment/EA.

The BLM will summarize the scoping effort and comments received in the Draft RMP Amendment/EA. The public is also encouraged to help identify any management questions and concerns that should be addressed in the RMP Amendment/EA. The BLM will work with interested parties to identify management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the RMP Amendment/EA in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines that may be involved in the RMP Amendment/EA process include: National Conservation Lands, outdoor recreation, archaeology, wildlife, rangeland management, soils, and socioeconomics.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Raymond Suazo,

State Director.

[FR Doc. 2020–06363 Filed 3–25–20; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1164]

Certain Light-Emitting Diode Products, Systems, and Components (II); Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined not to review an initial determination (''ID'') (Order No. 14) terminating the investigation based on withdrawal of the complaint. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 25, 2019, the Commission instituted this investigation based on a complaint, as amended and supplemented, by Lighting Science Group Corp. of Cocoa Beach, Florida; Healthe, Inc. of Cocoa Beach, Florida; and Global Value Lighting, LLC of West Warwick, Rhode Island (collectively ''LSG''). 84 FR 29879–80 (June 25, 2019). The amended complaint alleges violations of 19 U.S.C. 1337, as amended (''Section 337''), based upon the importation into the United States, sale for importation, and sale in the United States after importation of certain light-emitting diode products, systems, and components thereof by reason of infringement of certain asserted claims of U.S. Patent Nos. 7,098,483; 7,095,053; 8,506,118; 7,528,421; 8,674,608; 8,201,968 (''the '968 patent''); and 8,967,844 (''the '844 patent''). *Id.* The amended complaint also alleges violations of Section 337 based upon false advertising that threatens to destroy or substantially injure an industry in the United States. *Id.* The amended complaint further alleges the existence of a domestic industry. *Id.* The notice of investigation named eight (8) respondents. *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. *Id.*

At institution, the Commission ordered that two separate investigations be instituted based on the amended complaint to further efficient adjudication of the complaint allegations. Investigation No. 337–TA–1164 was instituted to determine whether there was a violation of Section 337 as to LED downlights and LED luminaires by reason of: (1) Infringement of one or more of claims 6 and 7 of the '968 patent and claim 4 of the '844 patent; and (2) false advertising the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* at 29879. Investigation No. 337–TA–1163 was instituted to determine whether there was a violation of Section 337 based on the remainder of the allegations in the amended complaint, subject to further severance by the presiding ALJ. 84 FR 29877–78 (June 25, 2019).

The Commission previously terminated this investigation in part with respect to certain parties, accused products, and the false advertising claim. *See* Order No. 7 (Oct. 7, 2019), *not rev'd,* Comm'n Notice (Oct. 30, 2019) (terminating certain respondents); Order No. 9 (Nov. 6, 2019), *not rev'd,* Comm'n Notice (Dec. 2, 2019) (terminating certain respondents and false advertising allegations); Order No. 11 at 1 (Jan. 16, 2020), *not rev'd,* Comm'n Notice (Feb. 11, 2020) (withdrawing claim 7 of the '968 patent).

On March 5, 2020, the presiding Administrative Law Judge issued the subject ID (Order No. 14) granting LSG's unopposed motion to terminate the investigation in its entirety, pursuant to 19 CFR 210.21(a), based on LSG's withdrawal of its complaint. Order No. 14 at 1 (Mar. 5, 2020). The ID finds no extraordinary circumstances that warrant denying the motion, while LSG asserted that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. *Id.* at 2. The ID notes that OUII supported the motion and no respondent opposed it. *Id.* at 1. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The investigation is hereby terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 20, 2020

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–06265 Filed 3–25–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Services to Advocate for and Respond to Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0025. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 45 grantees of the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (which includes the previously authorized Services to Advocate for and Respond to Youth Program) which creates a unique opportunity for communities to increase collaboration among non-profit victim service providers, violence prevention programs, and child and youth organizations serving victims ages 0–24.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 45 respondents approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Consolidated Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 90 hours, that is 45 grantees completing a form twice a year with an estimated one hour to complete the form.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: March 23, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–06340 Filed 3–25–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0024. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 15 grantees of the Tribal Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.

The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond/reply: It is estimated that it will take the approximately 15 respondents (grantees from the Tribal Sexual Assault Services Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal SASP grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 30 hours, that is 15 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: March 23, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–06343 Filed 3–25–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 20, 2020, the Department of Justice lodged a proposed First Partial Consent Decree and proposed Second Partial Consent Decree with the United States District Court for the Western District of Texas in the lawsuit titled *United States of America* v. *Ector Drum, Inc., et al.,* Civil Action No. 7:20 cv 00074.

The two partial consent decrees resolve claims against Ector Drum Inc., Carl Randle Beard, Sandra Kay Beard, BB Chemicals, Inc., Continental Products of Texas, Energy Intermediates, Inc., Hess Corporation, Kel Tech, Inc., Monachem, Inc., Novastar L.P., Performance Chemical Company, Tetraco, LLC, and Wagner Supply Co., Inc. arising under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), relating to the Ector Drum Superfund Site in Ector County, Texas. Under the proposed First Partial Consent Decree, the Defendants BB Chemicals, Inc., Continental Products of Texas, Energy Intermediates, Inc., Hess Corporation, Kel Tech, Inc., Monachem, Inc., Novastar L.P., Performance Chemical Company, Tetraco, LLC, and Wagner Supply Co., Inc. will pay, collectively, $1,575,255 to the United States resolve the United States' claims. Under the proposed Second Partial Consent Decree, Defendants Ector Drum Inc., Carl Randle Beard, and Sandra Kay Beard will endeavor to sell the property on which the Site is located and pay a specified portion of the proceeds of any sale(s) to the United States.

The publication of this notice opens a period for public comment on the proposed First Partial Consent Decree and Second Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Ector Drum, Inc., et al.,* D.J. Ref. No. 90–11–3–11781/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed First Partial Consent Decree and Second Partial Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 for the First Partial Consent Decree and $7.25 for the Second Partial Consent Decree (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–06369 Filed 3–25–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Technical Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0017. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 100 programs providing technical assistance as recipients under the Technical Assistance Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately one hour to complete a semi-annual progress report twice a year. The semi-annual progress report for the Technical Assistance Program is divided into sections that pertain to the different types of activities in which Technical Assistance Providers are engaged.

The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the semi-annual progress report form is 200 hours. It will take approximately one hour for the grantees to complete the form twice a year.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: March 23, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–06342 Filed 3–25–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Application Data

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Forms ETA 652, 655 and 682 are used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corp program in accordance with the requirements of the Workforce Investment Act. They concern questions of economic criteria and past behavior problems as well as questions needed to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 8, 2020 (85 FR 935).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Job Corps Application Data.

OMB Control Number: 1205–0025.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 139,814.

Total Estimated Number of Responses: 139,814.

Total Estimated Annual Time Burden: 12,544 hours.

Total Estimated Annual Other Costs Burden: $90,944.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 18, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–06315 Filed 3–25–20; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information

collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity for any money or valuable consideration paid or promised to be paid, unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. See 29 U.S.C. 1802(7), 1811(a); 29 CFR 500.1(c), –.20(i), –.40. MSPA also provides that a Farm Labor Contractor (FLC) shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a FLC or a certificate of registration as a Farm Labor Contractor Employee (FLCE) of the FLC that authorizes the activity for which such individual is hired, employed or used. 29 U.S.C. 1811(b); 29 CFR 500.1(c). Form WH–530 is an application used to obtain a Farm Labor Contractor License. This information collection is currently approved for use through March 31, 2020. MSPA section 401 (29 U.S.C. 1841) requires, subject to certain exceptions, all Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs) to ensure that any vehicle they use or cause to be used to transport or drive any migrant or seasonal agricultural worker conforms to safety and health standards prescribed by the Secretary of Labor under the MSPA and with other applicable Federal and State safety standards. These MSPA safety standards address the vehicle, driver, and insurance. The Wage and Hour Division (WHD) has created Forms WH–514, WH–514a, and WH–515, which allow FLC applicants to verify to the WHD that the vehicles used to transport migrant/seasonal agricultural workers meet the MSPA vehicle safety standards and that anyone who drives such workers meets the Act's minimum physical requirements. The WHD uses the information in deciding whether to authorize the FLC/FLC Employee applicant to transport/drive any migrant/seasonal agricultural worker(s) or to cause such transportation. Form WH–514 is used to verify that any vehicle used or caused to be used to transport any migrant/seasonal agricultural worker(s) meets the Department of Transportation (DOT) safety standards. When the adopted DOT rules do not apply, FLC applicants seeking authorization to transport any migrant/seasonal agricultural workers use Form WH–514a to verify that the vehicles meet the DOL safety standards and, upon the vehicle meeting the required safety standards, the form is completed. Form WH–515 is a doctor's certificate used to document that a motor vehicle driver or operator meets the minimum DOT physical requirements that the DOL has adopted. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 31, 2019 (84 FR 58413).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

OMB Control Number: 1235–0016.

Affected Public: Businesses or other for-profits, farms, not-for-profit institutions.

Total Estimated Number of Respondents: 27,632.

Total Estimated Number of Responses: 34,672.

Total Estimated Annual Time Burden: 13,304 hours.

Total Estimated Annual Other Costs Burden: $995,540.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 19, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–06314 Filed 3–25–20; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0217]

Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement (US/IAEA).''

DATES: Submit comments by May 26, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2019–0217. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0217 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0217. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0217 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML20013G179.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0217 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 75, ''Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.''

2. *OMB approval number:* 3150–0055.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Selected licensees are required to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by International Atomic Energy Agency Agreement (IAEA) inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

6. *Who will be required or asked to respond:* Licensees of facilities on the US eligible list who have been selected by the IAEA for reporting or recordkeeping activities.

7. *The estimated number of annual responses:* 32 (2 reporting responses plus 30 recordkeepers).

8. *The estimated number of annual respondents:* 30.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 4,227 hours.

10. *Abstract:* Part 75 of title 10 of the *Code of Federal Regulations,* requires selected licensees to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by IAEA inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. In addition, this collection is being renewed to include approximately 25 entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366). These licensees will provide reports of nuclear material inventory and flow for entities under the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366), permit inspections by IAEA inspectors, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the US State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058). The NRC needs this information to implement its responsibilities under the US/IAEA agreement.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 20th day of March 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–06267 Filed 3–25–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320; NRC–2020–0082]

Three Mile Island Nuclear Station, Unit No. 2; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company (collectively, the FirstEnergy Companies), and TMI–2 Solutions, LLC (together with the FirstEnergy Companies, the Applicants) on November 12, 2019. The application seeks NRC approval of the direct transfer of NRC Possession-Only License No. DPR–73 for Three Mile Island Nuclear Station, Unit No. 2 (TMI–2) from the current holders, the FirstEnergy Companies, to TMI–2 Solutions, LLC, which is an indirect wholly owned subsidiary of Energy*Solutions.* The NRC is also considering amending the possession-only license for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by April 27, 2020. A request for a hearing must be filed by April 15, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: You may submit comments by any of the following method:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0082. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact the Office of the Secretary at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Smith, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6721; email: *Ted.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0082 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0082.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2020–0082 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of NRC Possession-Only License No. DPR–73 for TMI–2, currently held by the FirstEnergy Companies. The transfer would be to TMI–2 Solutions, LLC. The NRC is also considering amending the possession-only license for administrative purposes to reflect the proposed transfer. The application now being considered is dated November 12, 2019, and was filed by the Applicants (ADAMS Accession No. ML19325C600).

Following approval of the proposed direct transfer of the license, TMI–2 Solutions, LLC would acquire ownership of the TMI–2 facility. TMI–2 Solutions, LLC would be responsible for the maintenance and decommissioning of the TMI–2 facility.

No physical changes to the TMI–2 facility or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right

thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance

with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located at the bottom of the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail at of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Gregory Halnon, GPU Nuclear, Inc., at 330–761–4270 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland this 23rd day of March 2020.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–06387 Filed 3–25–20; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Annual notice.

SUMMARY: Notice is given of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

DATES: Membership is effective on March 26, 2020.

FOR FURTHER INFORMATION CONTACT: Linda M. Beard, Human Resources Specialist, U.S. Occupational Safety and Health Review Commission, 1120 20th Street NW, Washington, DC 20036, (202) 606–5393.

SUPPLEMENTARY INFORMATION: The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. Members of the PRB serve for a period of 24 months. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Charlotte Dye, Deputy General Counsel, Office of General Counsel, Federal Labor Relations Authority;
- Gisile Goethe, Director, Office of Resource Management, Federal Retirement Thrift Investment Board;
- Kimberly Moseley, Executive Director, Federal Service Impasses Panel; and
- Christopher J. Roscetti, Technical Director at the Defense Nuclear Facilities Safety Board.

James J. Sullivan,

Chairman.

[FR Doc. 2020–06257 Filed 3–25–20; 8:45 am]

BILLING CODE 7600–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: March 21, 2020, at 11:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On March 21, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2020–06414 Filed 3–24–20; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88455; File No. SR–MIAX–2020–04]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 100, Definitions and Exchange Rule 503, Openings on the Exchange

March 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 100, Definitions; and Exchange Rule 503, Openings on the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 100 to adopt new definitions for the terms ''Composite Market,'' ''Composite Width,'' and ''Maximum Composite Width.'' The Exchange also proposes to amend Exchange Rule 503, to incorporate the proposed Composite Market into its opening process. Finally, the Exchange proposes to make minor non-substantive changes to Rule 503 to correct internal cross-references within the Exchange's rulebook. The Exchange believes that incorporating the concept of a Composite Market into its existing opening process will improve the speed and efficiency of the opening process without impairing price discovery.

The Exchange proposes to amend Exchange Rule 100 to adopt a new definition for Composite Market that will mean, ''the market for a series comprised of (1) the higher of the then-current best appointed Market Maker[3] bid quote on the Exchange and the ABB[4] (if there is an ABB) and (2) the lower of the then-current best appointed Market Maker offer quote on the Exchange and the ABO[5] (if there is an ABO). The term ''Composite Bid (Offer)'' means the bid (offer) used to

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ABB means the Away Best Bid.

[5] The term ABO means the Away Best Offer.

determine the Composite Market.'' [6] The Exchange also proposes to amend Exchange Rule 100 to adopt a new definition for Composite Width that will mean, ''the width of the Composite Market (*i.e.,* the width between the Composite Bid and the Composite Offer) of a series.'' [7] Finally, the Exchange proposes to amend Exchange Rule 100 to adopt a new definition of Maximum Composite Width, that will mean, the amount that the Composite Width of a series may generally not be greater than for the series to open. The Maximum Composite Widths for all classes are as follows (based on the Composite Bid for a series):

Low end of range (bid)	High end of range (bid)	Maximum composite width
$0.00	$1.99	$5.00
2.00	5.00	5.00
5.01	10.00	5.00
10.01	20.00	5.00
20.01	+	5.00

The Exchange may modify these amounts when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange will announce to Members [8] via Regulatory Circular).[9] The Maximum Composite Width corresponds to the opening valid width range currently used by the Exchange.

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to incorporate the Composite Market into the Exchange's opening process. The Composite Market will be used during the opening process to determine whether or not to open a series for trading. The Exchange believes it is appropriate to consider any quotes from away markets in addition to quotes on its own market when determining whether to open a series, because consideration of all then-available pricing information may provide for more accurate opening prices.

Current Opening Process

The Exchange's current opening process is dependent upon the presence of valid width quotes to begin.[10] A valid width quote is defined in the Exchange's rules as, one where the bid and offer, comprised of a Market Maker's Standard quotes [11] and Day eQuotes,[12] differ by no more than the differences outlined in Exchange Rule 603(b)(4)(i).[13] Exchange Rule 603(b)(4)(i) establishes a bid/ask differential of $5.00.[14] However, Exchange Rule 603(b)(4)(ii) further provides that the Exchange may establish differences other than the bid/ask differences described in Rule 603(b)(4)(i) for one or more option series or classes. When the Exchange establishes bid/ask differentials under Exchange Rule 603(b)(4)(ii) the Exchange publishes a Regulatory Circular identifying the option symbol, security name, and valid width bid/ask differential for the opening process and for intra-day quoting.

Paragraph (e) Starting the Opening Process, of Exchange Rule 503, provides that, (1) the opening process cannot occur prior to 9:30 a.m. Eastern Time and can only begin following the dissemination of a quote or trade in the market for the underlying security. Following the dissemination of a quote or a trade in the market for the underlying security, the System [15] will pause for a period of time no longer than one half second to allow the market place to absorb this information. The length of the pause will be disseminated to members through a Regulatory Circular. After the conclusion of the pause the opening process will begin when either: (i) The Primary Lead Market Maker's [16] valid width quote has been submitted; (ii) the valid width quotes of at least two Market Makers, where at least one is a Lead Market Maker,[17] have been submitted; or (iii) for multiply listed option classes, at least one Eligible Exchange (as defined in Rule 1400(g)) has disseminated a quote in the individual option in accordance with Rule 1402(a), there is a valid width NBBO [18] available and the valid width quote of at least one Lead Market Maker has been submitted.

The current rule further provides that (2) for purposes of this rule a valid width NBBO is one where the bid and offer of the NBBO differ by no more than differences outlined in Exchange Rule 603(b)(4)(i); (3) also, for purposes of this rule, valid width quote is one where the bid and offer, comprised of a Market Maker's Standard quotes and Day eQuotes, differ by no more than the differences outlined in Exchange Rule 603(b)(4)(i); (4) if after two minutes following the dissemination of a quote or trade in the market for the underlying security none of the provisions set forth in (e)(1) above have occurred, then the opening process can begin when one Market Maker has submitted its valid width quote; (5) the Primary Lead Market Maker assigned in a particular equity option class must enter valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security; and (6) a Registered Market Maker [19] that submits a quote

[6] This definition is substantially similar to the definition of a Composite Market used on another options exchange. *See* Cboe Exchange Rule 5.31(a).

[7] This definition is substantially similar to the definition for Composite Width used on another options exchange. *See* Cboe Exchange Rule 5.31(a).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] This definition is substantially similar to the definition for Maximum Composite Width used on another options exchange. *See* Cboe Exchange Rule 5.31(a).

[10] *See* Exchange Rule 503(e)(1)(i), (ii), and (iii).

[11] A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any. *See* Exchange Rule 517(a)(1).

[12] A Day eQuote is a quote submitted by a Market Maker that does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. *See* Exchange Rule 517(a)(2)(i).

[13] Also, for purposes of this rule, valid width quote is one where the bid and offer, comprised of a Market Maker's Standard quotes and Day eQuotes, differ by no more than the differences outlined in Exchange Rule 603(b)(4)(i). See Exchange Rule 503(e)(3).

[14] Under Exchange Rule 603(b) a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market: (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed. (2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the System in all series of option classes to which the Market Maker is appointed. (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed. (4)(i) To price option contracts fairly by, among other things, bidding and offering so as to create differences of no more than $5 between the bid and offer (''bid/ask differentials'') following the opening rotation in an equity option contract;

[15] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[16] The term ''Primary Lead Market Maker'' means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and responsibilities specified in Chapter VI of MIAX Exchange Rules with respect to Primary Lead Market Makers. *See* Exchange Rule 100.

[17] The term ''Lead Market Maker'' means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of MIAX Exchange Rules will apply. *See* Exchange Rule 100.

[18] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[19] The term ''Registered Market Maker'' means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of MIAX Options Exchange

pursuant to this Rule 503 in any series when a Lead Market Maker's or Primary Lead Market Maker's quote has not been submitted shall be required to submit continuous, two-sided quotes in such series until such time as a Lead Market Maker submits his/her quote, after which the Registered Market Maker that submitted such quote shall be obligated to submit quotations pursuant to Rule 604(e)(3).

Proposed Opening Process

The Exchange now proposes to amend paragraph (e) of Rule 503 to remove certain references to valid width quotes and to incorporate the Composite Market into the opening process as described below. Specifically, proposed paragraph (e) Starting the Opening Process, will provide that (1) the opening process cannot occur prior to 9:30 a.m. Eastern Time and can only begin following the dissemination of a quote or trade in the market for the underlying security. Following the dissemination of a quote or a trade in the market for the underlying security, the System will pause for a period of time no longer than one half second to allow the market place to absorb this information. The length of the pause will be disseminated to members through a Regulatory Circular. After the conclusion of the pause the opening process will begin when either: (i) The Primary Lead Market Maker's quote has been submitted; (ii) the quotes of at least two Market Makers, where at least one is a Lead Market Maker, have been submitted; or (iii) for multiply listed option classes, at least one Eligible Exchange (as defined in Rule 1400(g)) has disseminated a quote in the individual option in accordance with Rule 1402(a), and the quote of at least one Lead Market Maker has been submitted.

The Exchange also proposes to adopt new subsection (7) to paragraph (e) that will state, ''[i]f the Composite Width is equal to or less than the Maximum Composite Width,[20] the opening process will continue.'' Finally, the Exchange proposes to adopt new subsection (8) to paragraph (e) that will state, ''[f]or purposes of this rule a valid width market is one where the Composite Width is equal to or less than the Maximum Composite Width.''

The proposal describes the opening process, which will begin when at least one of the prerequisite triggers has been satisfied, *i.e.,* (i) the Primary Lead Market Maker's quote has been submitted; (ii) the quotes of at least two Market Makers, where at least one is a Lead Market Maker, have been submitted; or (iii) for multiply listed option classes, at least one Eligible Exchange (as defined in Rule 1400(g)) has disseminated a quote in the individual option in accordance with Rule 1402(a), and the quote of at least one Lead Market Maker has been submitted.

For each series of options [21] the System will calculate a Composite Market using quotes from away markets in addition to quotes on its own market. The Composite Width for an option will then be evaluated against the Maximum Composite Width range, and the System will open the option for trading if the Composite Width is equal to or less than the Maximum Composite Width. The Exchange believes the proposed changes effectively integrate the proposed Composite Market into the existing opening process and will provide a faster and more efficient opening process while simultaneously improving the quality of the opening process. Performing a check of the Composite Width against the Maximum Composite Width is intended to facilitate that option series open in a fair and orderly manner and at prices consistent with the current market conditions for the option series and not at extreme prices, while taking into consideration prices disseminated from other option exchanges that may be better than the Exchange's at the open.

The examples below illustrate the operation of the current opening process and the proposed opening process as described herein.

Example 1 (Current Opening)

PLMM quote and Away Market Quote subject to individual quote evaluation
Valid Width: Maximum Bid and Offer Differential = $5.00
Pre-Opening Market:
PLMM (10) 23.90 x 30.50 (10)
ABBO [22] 0.00 x 0.00

Upon opening of the Underlying Security and a brief pause, the opening process for the related option products is initiated. The quote from the PLMM to buy 10 options at a price of 23.90 and sell 10 options at a price of 30.50 remains unchanged from the pre-opening. The Away Best Bid and Offer (ABBO) which is not considered pre-open, updates to reflect 0.00 x 24.00.

Resultant Evaluation:
PLMM (10) 23.90 x 30.50 (10) Invalid Width (6.60)
ABBO 0.00 x 24.00 Invalid Width (24.00)

Because the quote from the PLMM is not considered a valid width quote, nor is the quote from the ABBO considered valid width, the option products remain unopened.

Example 2 (Proposed Opening)

PLMM quote and Away Market Quote subject to Composite Market evaluation
Valid Width: Maximum Composite Width = $5.00
Pre-Opening Market:
PLMM (10) 23.90 x 30.50 (10)
ABBO 0.00 x 0.00

Upon opening of the Underlying Security and a brief pause, the opening process for the related option products is initiated. The quote from the PLMM to buy 10 options at a price of 23.90 and sell 10 options at a price of 30.50 remains unchanged from the pre-opening. The Away Best Bid and Offer (ABBO) which is not considered pre-open, updates to reflect 0.00 x 24.00.

Resultant Evaluation:
PLMM (10) 23.90 x 30.50 (10) Invalid Width (6.60)
ABBO 0.00 x 24.00 Invalid Width (24.00)
Composite Market 23.90 x 24.00 Composite Width (0.10)

The higher of the PLMM bid and the ABB, and the lower of the PLMM offer and the ABO, creates a Composite Market of 23.90 x 24.10, which has a Composite Width of 0.10. Under the proposed rule the Composite Width is equal to or less than the Maximum Composite Width, the opening process continues, and the option products could be opened.

Resultant Market:
PLMM (10) 23.90 x 30.50 (10)
MBBO [23] (10) 23.90 x 30.50 (10)
ABBO 0.00 x 24.00
NBBO 23.90 x 24.00

Additionally, the Exchange proposes to amend subsection (f)(2)(i), Expanded Quote Range, of Rule 503, to further incorporate the Composite Market into the opening process. Currently, if there are quotes or orders that lock or cross each other, the System calculates an Expanded Quote Range (''EQR'') to

Rules with respect to Market Makers. *See* Exchange Rule 100.

[20] The Exchange notes that the default settings for the Maximum Composite Width are the same as the Exchange's current default settings for opening valid width range.

[21] The term ''series of options'' means all option contracts of the same class having the same exercise price and expiration date. *See* Exchange Rule 100.

[22] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[23] The term ''MBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

establish the range within which transactions may occur during the opening process.[24] The EQR will be recalculated any time a Route Timer [25] or Imbalance Timer [26] expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer.[27]

The Exchange now proposes to amend subsection (f)(2)(i)(A)1. to provide that, to determine the minimum value for the EQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the Composite Bid. Further, subsection (f)(2)(i)(A)1. will be amended to provide that, to determine the maximum value for the EQR, an amount, as defined in a table to be determined by the Exchange, will be added to the Composite Offer.

Additionally, subsection (f)(2)(i)(A)2. will be amended to provide that, if one or more away markets have disseminated quotes that are not crossed and together comprise a valid width market, and the Composite Market crosses an ABBO, or is internally crossed, then: (a) The minimum value for the EQR will be the Composite Offer less an amount, as defined in a table to be determined by the Exchange, and (b) the maximum value for the EQR will be the Composite Bid plus an amount, as defined in a table to be determined by the Exchange.

The Exchange also proposes to amend subsection (f)(2)(i)(B)1. to provide that, except as provided in subparagraph (3) of Rule 503(f)(2)(i)(B), to determine the minimum value for the EQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the Composite Bid; and 2. to provide that, except as provided in subparagraph (3) of Rule 503(f)(2)(i)(B) to determine the maximum value for the EQR, an amount, as defined in a table to be determined by the Exchange, will be added to the Composite Offer.

Additionally, subsection (f)(2)(i)(B)3. will be amended to provide that, if there are quotes on the Exchange that cross each other, and there is no away market in the affected series, then; (a) the minimum value for the EQR will be the Composite Offer less an amount, as defined in a table to be determined by the Exchange; and (b) the maximum value for the EQR will be the Composite Bid plus an amount, as defined in a table to be determined by the Exchange.

The Exchange believes that incorporating the Composite Market into the EQR calculation is beneficial to market participants because the EQR provides a more accurate measure as to whether there is sufficient available liquidity in the broader market system to provide a fair and orderly opening process and sufficient price discovery for the options to open for trading because it incorporates the prices on away markets into its evaluation.

Finally, the Exchange proposes to amend Exchange Rule 503(f)(2)(vii)(B)(5)a. to make a non-substantive change to correct an internal cross-reference within the Exchange's rulebook. Currently the rule provides that, if the option is being used in the calculation of a final settlement price of an Index pursuant to Chapter XVIII of Exchange Rules on expiration date, then . . . the System will instead conduct a further imbalance process to trade the entire imbalance amount, as described in Exchange Rule 1809. The Exchange proposes to replace Chapter XVIII with Policy .02 of Exchange Rule 503; and to replace Exchange Rule 1809 with Policy .03 of Exchange Rule 503. While Chapter XVIII of the Exchange Rules describes Index Options, and Exchange Rule 1809, describes Terms of Index Options Contracts, the final settlement price calculation for an Index Option is described in Exchange Rule 503, specifically in Policy .02 and .03.[28] Therefore, correcting these internal cross-references will add clarity and precision to the Exchange's rules.

2. Statutory Basis

MIAX Options believes that its proposed rule change is consistent with Section 6(b) of the Act [29] in general, and furthers the objectives of Section 6(b)(5) of the Act [30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed addition of a Composite Market into the Exchange's existing opening process promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general protects investors and the public interest by improving the Exchange's opening process by creating additional opportunities for price discovery based on then-current market conditions. The Exchange believes it is appropriate to consider any quotes from away markets in addition to quotes on its own market when determining whether to open an option series in all classes, because consideration of all then-available pricing information may provide for more accurate opening prices. By incorporating a Composite Market, which includes prices from away exchanges, the Exchange believes the proposed opening process will promote competitive liquidity and open option series at prices consistent with then-current market conditions, and thus will promote a faster and more efficient opening process.

The Exchange believes that removing the requirement that a Market Maker's submitted quotes must be valid width as a pre-requisite to beginning the opening process is benign in light of the new proposed process. Under the Exchange's current Rule the Exchange would begin the opening process when either (i) the Primary Lead Market Maker's valid width quote has been submitted; (ii) the valid width quotes of at least two Market Makers, where at least one is a Lead Market Maker, have been submitted; or (iii) for multiply listed option classes, at least one Eligible Exchange (as defined in Rule 1400(g)) has disseminated a quote in the individual option in accordance with Rule 1402(a), there is a valid width NBBO available and the valid width quote of at least one Lead Market Maker has been submitted. Valid width quotes were required to ensure that the Exchange did not open at prices that were extreme and potentially erroneous.

The Exchange is proposing to remove the valid width evaluation from Rule 503(e)(1)(i) (ii) and (iii) as described above; and to relocate the evaluation of quotes for valid width to a separate provision (new proposed paragraph 503(e)(7)) in the Rule. The Exchange is proposing to adopt new rule text [31] which will provide that the Composite Width must be equal to or less than the Maximum Composite Width for the opening process to continue. If the Composite Width is greater than the Maximum Composite Width, the opening process will not continue for that option. This check ensures that the

[24] *See* Exchange Rule 503(f)(2).

[25] *See* Exchange Rule 529(b).

[26] *See* Exchange Rule 503(f)(2)(vii)(A).

[27] *See* Exchange Rule 503(f)(2)(i).

[28] *See* Securities Exchange Release No. 84578 (November 13, 2018), 83 FR 58306 (November 19, 2018) (SR–MIAX–2018–32) (Amend Exchange Rule 503 To Adopt Interpretations and Polices .02 and .03).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* proposed Exchange Rule 503(e)(7).

Exchange does not open at prices that are extreme and potentially erroneous.

The Exchange notes that at least two other option exchanges' opening processes do not require Market Maker valid width quotes. The Cboe Exchange similarly employs a Composite Market,[32] Composite Width,[33] and Maximum Composite Width,[34] in its opening auction process. The Cboe Exchange relies upon the occurrence of one, or the other, of the following two triggers to begin its opening rotation. For equity options, the System initiates the opening rotation after a time period (which the Exchange determines for all classes) upon the earlier of: (i) The passage of two minutes (or such shorter time as determined by the Exchange) after the System's observation after 9:30 a.m. of either the first disseminated transaction or the first disseminated quote on the primary market in the security underlying an equity option; or (ii) the System's observation after 9:30 a.m. of both the first disseminated transaction and the first disseminated quote on the primary market in the security underlying an equity option.[35] After the System initiates the opening rotation for a series as described above, the System performs a Maximum Composite Width Check.[36] The Cboe Exchange provides that the term ''Maximum Composite Width'' means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions set forth in paragraph (e)(1) of Cboe Exchange Rule 5.31). The Maximum Composite Widths for all classes on the Cboe Exchange are as follows (based on the Composite Bid for a series):

Composite bid	Maximum composite width
0–1.99	0.50
2.00–5.00	0.80
5.01–10.00	1.00
10.01–20.00	2.00
20.01–50.00	3.00
50.01–100.00	5.00
100.01–200.00	8.00
≥ 200.01	12.00

The Cboe Exchange provides that it may modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).[37] After a series satisfies the Maximum Composite Width Check, if there are orders and quotes marketable against each other at a price not outside the Opening Collar, the System determines the Opening Trade Price for the series.[38]

On the Cboe Exchange the term ''Opening Collar' means the price range that establishes limits at or inside of which the System determines the Opening Trade price for a series. The Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The Opening Collar widths for all classes on the Cboe Exchange are as follows (based on the Composite Bid for a series):

Composite bid	Opening collar width
0–1.99	0.50
2.00–5.00	0.80
5.01–10.00	1.00
10.01–20.00	2.00
20.01–50.00	3.00
50.01–100.00	5.00
100.01–200.00	8.00
≥ 200.01	12.00

The Cboe Exchange provides that it may modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Cboe Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).[39]

Similarly, the NYSE American Exchange does not require valid width quotes from a Market Maker to open option series. At or after 9:30 a.m. Eastern Time, the NYSE American Exchange rules provide that once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote, the related option series will be opened automatically based on the following principles and procedures: (A) The system will determine a single price at which a particular option series will be opened. (B) Orders and quotes in the system will be matched up with one another based on price-time priority; provided, however, that orders will have priority over Market Maker quotes at the same price. (C) Orders in the System Book that were not executed during the Auction Process shall become eligible for the Core Trading Session immediately after the conclusion of the Auction Process. (D) The System will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range. For the purposes of this rule, an acceptable range shall mean within the bid-ask differential guidelines established pursuant to Rule 925NY(b)(4).[40] (E) If the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial uncrossed NBBO disseminated by OPRA for the series, provided that the bid-ask differential does not exceed the bid-ask differential specified under Rule 925NY(b)(5).[41]

The Cboe Exchange, NYSE American Exchange, and the MIAX Options Exchange have all established unique bid/ask differentials at the various bid levels, that allow each exchange to open at prices which are not extreme. The Exchange believes that defining a default Maximum Composite Width provides transparency in the Exchange's rules concerning its opening process.

The Exchange believes that its proposed opening process is substantially similar to its current opening process: (i) The proposed Composite Market Width default values are based on the Exchange's current opening valid width values; and (ii) the proposed Composite Market Width check is similar to the Exchange's current valid width quote check which

[32] The term ''Composite Market'' means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange the ABB (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the ABO (if there is an ABO). The term ''Composite Bid (Offer)'' means the bid (offer) used to determine the Composite Market. *See* Cboe Exchange Rule 5.31(a).

[33] The term ''Composite Width'' means the width of the Composite Market (*i.e.,* the width between the Composite Bid and the Composite Offer) of a series. *See* Cboe Exchange Rule 5.31(a).

[34] *See* Cboe Exchange Rule 5.31(a).

[35] *See* Cboe Exchange Rule 5.31(d)(1)(A).

[36] *See* Cboe Exchange Rule 5.31(e)(1).

[37] *See* Cboe Exchange Rule 5.31.

[38] *See* Cboe Exchange Rule 5.31(e)(2).

[39] *See* Cboe Exchange Rule 5.31(a).

[40] NYSE American Exchange Rule 925NY(b) establishes bid/ask differences for Market Makers in open outcry of: (A) No more than .25 between the bid and the offer for each contract for which the bid is less than $2, (B) no more than .40 where the bid is $2 or more but does not exceed $5, (C) no more than .50 where the bid is more than $5 but does not exceed $10, (D) no more than .80 where the bid is more than $10 but does not exceed $20, and (E) no more than $1 when the last bid is $20.01 or more, provided that a Trading Official may establish differences other than the above for one or more series or classes of options. *See* NYSE American Exchange Rule 925NY(b)(4).

[41] NYSE American Exchange Rule 925NY(b) requires that a Market Maker's electronically submitted quotes to the System during Core Trading Hours have a bid/ask difference not to exceed $5 between the bid and offer regardless of the price of the bid. *See* NYSE American Exchange Rule 925NY(b)(5).

ensures that the Exchange does not open at prices that are erroneous or extreme. While the Exchange no longer requires the presence of a Market Maker's valid width quotes in its opening process, the Exchange notes that other exchanges, such as the Cboe and NYSE American, similarly do not require the presence of a Market Maker's valid width quotes to open.

The Exchange believes the inclusion of the ABBO in the composition of the Composite Market will continue to provide opportunities for price discovery based on then-current market conditions when the Exchange opens series for trading. The Exchange believes the proposed opening process will promote competitive liquidity and open series at prices consistent with then-current market conditions, and thus will promote a fair and orderly opening process. The Exchange believes that ensuring that the Composite Width is equal to or less than the Maximum Composite Width ensures that the Exchange will not open at prices which are extreme. The Exchange believes it is appropriate to open a series under the proposed circumstances and provide marketable orders with an opportunity to execute at a reasonable price, because there is minimal risk of execution at an extreme price.

Additionally, the Exchange believes using the Composite Market to establish the Expanded Quote Range, which represents the limits of the range in which transactions may occur during the opening process,[42] promotes just and equitable principles of trade, and perfects the mechanism or a free and open market and a national market system and, in general protects investors and the public interest as it is substantially similar to the current EQR process. Current Exchange Rule 503(f)(2)(i)(A) considers away market quotes for EQR purposes and uses the highest valid width quote bid among valid width quotes on the Exchange and on the away market(s) to determine the minimum value for the EQR; and the lowest valid width quote offer among valid width quotes on the Exchange and on the away market(s) to determine the maximum value for the EQR.[43] Under the Exchange's proposal the use of a Composite Market creates uniformity in the Exchange's process to establish the EQR. The Exchange believes that using the Composite Bid and the Composite Offer to determine the EQR range may improve the range within which transactions may occur during the opening process as the Composite Market considers all quotes in the market, in addition to the Exchange's quotes.

The Exchange believes adopting new rule text to provide that for the purposes of this rule a valid width market is one where the Composite Width is equal to or less than the Maximum Composite Width, promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing clarity and precision in the Exchange's rules thereby mitigating any potential investor confusion.

Similar to the Exchange's EQR, which represents the limits of the range in which transaction may occur during the opening process, the Cboe Exchange employs an Opening Collar[44] which establishes limits at or inside of which the System determines the Opening Trade Price for a series. Neither the Cboe Exchange Opening Collar nor the MIAX Exchange EQR rely upon Market Maker quotes for its calculation but instead use a value from the Composite Market as a basis for its calculation. The Cboe Exchange Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The Exchange's EQR calculation also uses the Composite Market to establish the transaction range, but performs slightly different calculations depending upon; (A) If one or more away markets have disseminated valid width quotes in the affected series;[45] or (B) If no away markets have disseminated valid width quotes in the affected series.[46]

Further, under the Exchange's proposal Market Makers on the Exchange are not relieved of their obligations. Primary Lead Market Makers assigned in a particular equity option class must enter valid width quotes[47] not later than one minute following the dissemination of a quote or trade by the market for the underlying security.[48] A faster, more efficient, opening of a particular option does not relieve the Primary Lead Market Maker of the obligation to provide valid width quotes as described above.[49]

Additionally, Market Makers on the Exchange are required to fulfill their quoting obligations as described in Exchange Rule 603, Obligations of Market Makers, and Rule 604, Market Maker Quotations. Exchange Rule 603(b) provides that with respect to each options class to which a Market Maker is appointed under Exchange Rule 602, the Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market: (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed; (2) to make markets that, absent changed market conditions, will be honored for the number of contracts entered into the System in all series of options classes to which the Market Maker is appointed; (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed; (4)(i) to price option contracts fairly by, among other things, bidding and offering so as to create differences of no more than $5 between the bid and offer (''bid/ask differentials'') following the opening rotation in an equity contract.

Under Exchange Rule 604, Market Maker Quotations, a Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes in at least the lesser of 99% of the non-adjusted option series, or 100% of the non-adjusted option series minus one put-call pair, in each class in which the Primary Lead Market Maker is assigned.[50] A Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes in at least 90% of the non-adjusted option series in each of its appointed classes.[51] A Registered Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes throughout the

[42] *See* Exchange Rule 503(f)(2)(i).

[43] *See* Exchange Rule 503(f)(2)(i)(A)1.

[44] *See supra* note 39.

[45] *See* Exchange Rule 503(f)(2)(i)(A).

[46] *See* Exchange Rule 503(f)(2)(i)(B).

[47] Valid width quotes are also used to establish priority quotes on the Exchange as described in Exchange Rule 517(b)(1)(i), which are used for allocation purposes as described in Exchange Rule 514(e), which is not changing under this proposal.

[48] *See* Exchange Rule 503(e)(5).

[49] The Exchange notes that it has internal surveillances that monitor PLMM quoting behavior to ensure compliance with Exchange Rules.

[50] *See* Exchange Rule 604(e)(1)(ii).

[51] *See* Exchange Rule 604(e)(2)(ii).

trading day in 60% of the non-adjusted series that have a time to expiration of less than nine months in each of its appointed classes.[52]

Market Makers on the Exchange receive a priority allocation under Exchange Rule 514, Priority of Quotes and Orders. Specifically, as described in Exchange Rule 514(e), after executions resulting from Priority Overlays set forth in paragraph (d) of Rule 514, when the pro-rata allocation method applies: (1) If there is interest at the NBBO, after all Priority Customers (if any) at that price have been filled, executions at that price will be first allocated to other remaining Market Maker priority quotes, which have not received a participation entitlement,[53] and have precedence over Professional Interest; [54] (2) If after all Market Maker priority quotes have been filled in accordance with (1) above and there remains interest at the NBBO, executions will be allocated to all Professional Interest at that price. Professional Interest is defined in Rule 100 and includes among other interest, Market Maker non-priority quotes (as described in Rule 517(b)(1)(iii)) and Market Maker orders in both assigned and non-assigned classes.[55]

To be considered a priority quote, at the time of execution, each of the following standards must be met: (A) The bid/ask differential of a Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Rule 603(b)(4)); (B) the initial size of both of the Market Maker's bid and the offer must be in compliance with the requirements of Rule 604(b)(2); (C) the bid/ask differential of a Market Maker's two-sided quote pair must meet the priority quote width requirements defined in subparagraph (ii) of Rule 517(b) [56] for each option; and (D) either of the following are true: (1.) At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided quote pair must be valid width for that option and must have been resting on the Book; or (2.) Immediately prior to the time the Market Maker enters a new quote that locks or crosses the MBBO, the Market Maker must have had a valid width quote already existing (*i.e.,* exclusive of the Market Maker's new marketable quote or update) among his two-sided quotes for that option.[57]

The Exchange notes that the definition of a priority quote is not changing under this proposal nor is the allocation methodology. While the Exchange's proposal may provide for faster openings on the Exchange it does not relieve Market Makers from fulfilling their obligations on the Exchange as described herein.

The proposed non-substantive rule changes are intended to correct inaccurate internal rule cross-references and are designed to protect investors by ensuring that the Exchange's rules accurately reference the proper rule, thereby mitigating any potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change to amend the opening process will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to orders and quotes of all market participants in the same manner.

The Exchange does not believe that the proposed rule change to amend the opening process will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it is designed to open series on the Exchange in a fair and orderly manner. The Exchange believes the proposed opening process will continue to provide market participants with an opportunity for price discovery based on then-current market conditions when the Exchange opens series for trading. This will facilitate the presence of sufficient liquidity in a series when it opens, and increase the ability of series to open at prices consistent with then-current market conditions (at the Exchange and on other exchanges) rather than at extreme prices that could potentially result in unfavorable executions to market participants.

The Exchange does not believe that the proposed rule change to amend the EQR calculation will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because incorporating the Composite Market into the EQR calculation is designed to improve the limits of the range within which transactions may occur during the opening process and allow the Exchange to open at prices which are not extreme.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the Exchange apply equally to all Exchange Members.

Additionally, the non-substantive changes proposed by the Exchange provide additional clarity and detail in the Exchange's rules and are not changes made for any competitive purpose.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act [58] and Rule 19b–4(f)(6) [59] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [60] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [61] permits the Commission to designate a shorter time if such action is consistent

[52] *See* Exchange Rule 604(e)(3)(i).

[53] *See* Exchange Rule 514(g), (h), and (i).

[54] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. *See* Exchange Rule 100.

[55] *See* Exchange Rule 514(e).

[56] The priority quote width standard will be established by the Exchange and filed with the Commission in accordance with Section 19 of the Exchange Act and Rule 19b–4 thereunder. The Priority quote width standard established by the Exchange can have bid/ask differentials as narrow as one MPV, as wide but never wider than the bid/ask differentials outlined in Rule 603(b)(4), or somewhere in between. Notwithstanding the foregoing, until such time as the Exchange has submitted and received approval of a rule change establishing narrower bid/ask differentials, the priority quote width standard will be the bid/ask differentials outlined in Rule 603(b)(4). *See* Exchange Rule 517(b)(1)(ii).

[57] *See* Exchange Rule 517(b)(1)(i).

[58] 15 U.S.C. 78s(b)(3)(A).

[59] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[60] 17 CFR 240.19b–4(f)(6).

[61] 17 CFR 240.19b–4(f)(6)(iii).

with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiver of the operative delay would allow it to implement the proposal immediately and would allow investors and the public to immediately benefit from the Exchange's revised opening process. Further, the Exchange states that the proposed rule amendments are substantially similar to those currently in place on other options exchanges.[62] The Commission believes the proposal raises no novel or unique regulatory issues. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[63]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–04 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

J. Matthew DeLesDernier,

Assistant Secretary.

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[62] *See, e.g., supra* notes 6,7, 9, 32–34, 40–41.

[63] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88436; File No. SR–NYSEArca–2020–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

March 20, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 11, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (1) amend the requirement to qualify for the Tape B Tier 1 pricing tier; (2) amend the per share fee for PO Orders routed to the Nasdaq Stock Market LLC; (3) adopt a per share fee for PO Orders routed to Cboe BZX Exchange, Inc.; (4) adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities; and (5) amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers and to ETP Holders affiliated with such Lead Market Makers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) amend the requirement to qualify for the Tape B Tier 1 pricing tier; (2) amend the per share fee for Primary Only (''PO'') Orders [4] routed to the Nasdaq Stock

[4] A PO Order is a Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. *See* NYSE Arca Rule 7.31–E(f)(1).

Market LLC (''Nasdaq''); (3) adopt a per share fee for PO Orders routed to Cboe BZX Exchange, Inc. (''Cboe BZX''); (4) adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities; and (5) amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers (''LMMs''),[5] and to ETP Holders [6] affiliated with such LMMs, that provide displayed liquidity in Tape B securities to the NYSE Arca Book.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders and LMMs to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective March 11, 2020.[7]

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [9] Indeed, equity trading is currently dispersed across 13 exchanges,[10] numerous alternative trading systems,[11] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[12] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equity.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders and LMMs can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders on the Exchange, and with respect to the LMM credits, the proposed rule change is designed to be available to all LMMs on the Exchange, and is intended to provide ETP Holders and LMMs an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

Tape B Tier 1

The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

Currently, a Tape B Tier 1 credit of $0.0030 [14] per share applies to ETP Holders that, on a daily basis, measured monthly, directly execute providing volume in Tape B securities that is equal to at least 1.50% of US Tape B CADV [15] for the billing month.[16] Alternatively, ETP Holders could qualify for the Tape B Tier 1 credit if an ETP Holder who is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in all issues on NYSE Arca Options (excluding mini options) of at least 0.55% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (''OCC'') and the ETP Holder directly executes providing volume in Tape B securities during the billing month that is equal to

- at least 1.00% of US Tape B CADV for the billing month of February 2020.
- at least 1.15% of US Tape B CADV for the billing month of March 2020.
- at least 1.25% of US Tape B CADV for the billing month of April 2020 and each billing month thereafter.[17]

The Exchange proposes to amend the 1.00% CADV requirement so that it would continue to apply for an additional three months, *i.e.,* for each of March, April and May 2020; amend the 1.15% CADV requirement so that it would apply during each of June, July and August 2020, rather than March 2020; and amend the 1.25% CADV requirement so that it would apply during the billing month of September 2020 and each month thereafter, rather than April 2020.

The Exchange is not proposing any change to the level of credits applicable under the Tape B Tier 1 pricing tier.

The proposed rule change would allow a greater number of ETP Holders to qualify for the pricing tier as the lower CADV requirement would remain in place for an additional period of time. The proposed rule change would continue to encourage ETP Holders to promote price discovery and market quality for the benefit of all market participants. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which

[5] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[6] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[7] The Exchange originally filed to amend the Fee Schedule on March 2, 2020 (SR–NYSEArca–2020–19). SR–NYSEArca–2020–19 was subsequently withdrawn and replaced by this filing.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[9] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[10] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[11] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[12] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[13] *See id.*

[14] Under the Basic Rate, ETP Holders receive a credit of $0.0020 per share for Tape B orders that provide liquidity to the Book.

[15] US CADV means the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

[16] *See* Securities Exchange Act Release No. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87).

[17] *See* Securities Exchange Act Release No. 88194 (February 13, 2020), 85 FR 9820 (February 20, 2020) (SR–NYSEArca–2020–12).

add liquidity to the Exchange. Because, as proposed, the tier requires an ETP Holder increase the volume of its trades against orders that add liquidity in Tape B securities at increasing levels, the Exchange believes the current credit provides an incentive for ETP Holders to route additional liquidity to the Exchange in order to qualify for it.

Routing Fees

Currently, under Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule, the Exchange currently charges a per share fee of $0.0010 for PO Orders in Tape C securities that are routed to Nasdaq and execute in the opening or closing auction.[18] The Exchange proposes to increase the fee to $0.0030 per share and proposes to streamline the Fee Schedule by eliminating reference to this routing fee from Tier 1 and Tier 2 because the routing fee is not a tier-based fee and therefore should not be in Tier 1 and Tier 2.

Additionally, the Exchange proposes to adopt a fee of $0.0030 per share in the Basic Rates section of the Fee Schedule for PO Orders in Tape B securities that are routed to Cboe BZX for execution in the opening or closing auction on that market. The Exchange currently does not charge a fee for routing PO Orders to Cboe BZX. The purpose of the proposed fee is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it routes orders for execution in an away market's auction.

Step Up Tier 4

The Exchange currently has multiple levels of step-up pricing tiers, Step Up Tiers 1–4, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for providing displayed liquidity
Step Up Tier	$0.0030 (Tape A). $0.0023 (Tape B).
Step Up Tier 2 ...	$0.0031 (Tape C). $0.0028 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 3 ...	$0.0025 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 4 ...	$0.0033 (Tape A and C). $0.0034 (Tape B).

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in September 2019, it is eligible to earn higher credits for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.55% of US CADV for that month over the ETP Holder's providing ADV in September 2019, taken as a percentage of US CADV.

Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities.[19]

With this proposed rule change, the Exchange proposes to adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities. As proposed, ETP Holders that qualify for Step Up Tier 4 would not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities.[20]

The purpose of the proposed rule change is to continue to incentivize order flow providers to send liquidity-providing orders to the Exchange while capping the level of credit that such participants would receive. The Exchange believes that, although it is proposing to limit the financial incentive for orders that provide displayed liquidity in Tape B securities, the current rebate, *i.e.,* $0.0034 per share, is among one of the higher credits paid by the Exchange and should continue to serve as an incentive for ETP Holders to direct displayed liquidity providing orders to the Exchange.

The Exchange is not proposing any change to the level of credits applicable under the Step Up Tier 4.

LMM Credits

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B securities to the NYSE Arca Book.[21] Specifically, LMMs that are registered as the LMM in Tape B securities that have a consolidated average daily volume (''CADV'') in the previous month of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, whichever is greater (''Less Active ETP Securities''), and the ETP Holders affiliated with such LMMs, currently receive an incremental credit for orders that provide displayed liquidity to the Book in any Tape B securities that trade on the Exchange.[22] The current incremental credits and volume thresholds are as follows:

- An additional credit of $0.0004 per share if an LMM is registered as the LMM in at least 400 Less Active ETP Securities or at least 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV.
- An additional credit of $0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 400 Less Active ETP Securities or in at least 200 but less than 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV.
- An additional credit of $0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities.
- An additional credit of $0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities.
- An additional credit of $0.00005 per share if an LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities.

The number of Less Active ETP Securities for the billing month is based on the number of Less Active ETP Securities in which an LMM is

[18] *See* Securities Exchange Act Release No. 62843 (September 3, 2010), 75 FR 55624 (September 13, 2010) (SR–NYSEArca–2010–81).

[19] *See* Securities Exchange Act Release Nos. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR–NYSEArca–2019–43); and 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR–NYSEArca–2019–70).

[20] Under Step Up Tier 4, ETP Holders currently do not receive any incremental Tape C Tier credits for providing displayed liquidity.

[21] *See* Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87); 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR–NYSEArca–2016–165); and 85094 (February 11, 2019), 84 FR 4579 (February 15, 2019) (SR–NYSEArca–2019–05).

[22] The Exchange defines ''affiliate'' to ''mean any ETP Holder under 75% common ownership or control of that ETP Holder.'' *See* Fee Schedule, NYSE Arca Marketplace: General.

registered as the LMM on the average of the first and last business day of the previous month.

With this proposed rule change, the Exchange proposes that the CADV requirement of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, which is currently determined on a previous month basis, would instead be determined on a prior calendar quarter basis.

The purpose of the proposed rule change is to encourage LMMs and ETP Holders to enhance the market quality in Tape B securities that are listed and traded on the Exchange and the Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposal would also encourage competition in Tape B securities quoted and traded on the Exchange. To illustrate, for the billing month of March 2020, the CADV requirement would currently be measured based on February 2020 volume. With this proposed rule change, the CADV requirement would now be measured based on volume from the prior calendar quarter, *i.e.,* October 2019, November 2019 and December 2019.

The Exchange does not know how much order flow LMMs and ETP Holders choose to route to other exchanges or to off-exchange venues. The incremental credits in NYSE Arca-listed securities are available to all LMMs that are registered as the LMM in a security, and to ETP Holders that are affiliated with a LMM. Currently, there are no LMMs that qualify for the $0.0003 per share credit and 2 LMMs that qualify for the $0.0004 per share credit.[23] Without having a view of a LMM's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in more LMMs sending their orders in NYSE Arca-listed securities to the Exchange to qualify for the existing credits or whether this proposed rule change would result in LMMs to send more of their orders in NYSE Arca-listed securities to the Exchange to qualify for such credits. The Exchange cannot predict with certainty how many LMMs would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [27] Indeed, equity trading is currently dispersed across 13 exchanges,[28] numerous alternative trading systems,[29] and broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order which provide liquidity on an Exchange, LMMs and ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

Tape B Tier 1

The Exchange believes the proposed amendment to Tape B Tier 1 is reasonable because it would maintain the current threshold in place for an additional three months before increasing levels of activity is implemented to qualify for the Tape B Tier 1 credits. The Exchange believes that keeping the current requirement in place would allow a greater number of ETP Holders to qualify for the pricing tier. The Exchange believes the proposed rule change would continue to incentivize ETP Holders to bring additional order flow to a public exchange, thereby encouraging greater participation and liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are available to all ETP Holders on an equal basis. They also provide additional benefits or discounts that are reasonably related to the value of the Exchange's market quality and associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is one of several venues and off-exchange venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing exchanges

[23] As of February 28, 2020, there are 18 registered LMMs on the Exchange that could qualify for the incremental rebates for Less Active ETP Securities, all of whom are affiliated with one or more ETP holders.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[27] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[28] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[29] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based on members achieving certain volume thresholds.

Moreover, the Exchange believes the proposed amendment to Tape B Tier 1 is a reasonable means to encourage ETP Holders to increase their liquidity on the Exchange and their participation on NYSE Arca Options. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Routing Fees

The Exchange believes the proposed amendment to the routing fees is reasonable because it seeks to standardize the fee for routing PO Orders to away markets that conduct an opening and closing auction. The Exchange periodically reviews its fees and rebates and determined that it does not currently charge a fee for routing orders to Cboe BZX. The Exchange believes it is reasonable to adopt a fee when it routes orders to away markets. The Exchange also considered the fees charged by its affiliates, NYSE,[30] NYSE Chicago,[31] NYSE National [32] and NYSE American,[33] all of whom have a fee comparable to that proposed by the Exchange. In determining the routing fees, the Exchange considered transaction fees assessed by Nasdaq and Cboe BZX to which the Exchange routes orders for execution on those markets' opening and closing auctions. The Exchange believes that because the proposed fees are comparable to fees charged by the Exchange's affiliates, ETP Holders may choose to continue to send routable orders to the Exchange, thereby directing order flow to be entered on the Exchange. The Exchange believes it is reasonable to increase the fee for orders routed to Nasdaq for execution in that market's opening or closing auction as the proposed fee would be uniform with those charged by the Exchange's affiliates, who similarly charge $0.0030 per share for routing orders to away markets for execution.

As noted above, the Exchange's proposal to charge a fee of $0.0030 per share for orders in securities priced at or above $1.00 that are routed to Nasdaq and Cboe BZX for execution in the opening auction or closing auction on those markets is consistent with fees charged by the Exchange's affiliates NYSE, NYSE Chicago, NYSE National and NYSE American.

Step Up Tier 4

The Exchange believes the proposed rule change to cap the credit applicable to the Step Up Tier 4 credit in Tape B securities is reasonable because the current credit is among the highest paid by the Exchange, and the Exchange believes the level of the current rebate would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

LMM Credits

The Exchange believes the proposed rule change to amend the requirement to qualify for the incremental LMM credits is reasonable because it is intended to continue to encourage LMMs, and ETP Holders affiliated with such LMMs, to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposed amendment to qualify for the current incremental credit for adding liquidity is also reasonable because it would encourage liquidity and competition in all securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed change could incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in all securities, and in particular Tape B securities, to the benefit of all market participants.

Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for LMMs from the substantial amounts of liquidity present on the Exchange. All participants, including LMMs, would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

Tape B Tier 1

The Exchange believes the proposed amendment to Tape B Tier 1 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities and options volume. Additionally, a number of ETP Holders have a reasonable opportunity to satisfy the pricing tier's criteria.[34]

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The current pricing tier is available to all ETP Holders that are also OTP Holders or OTP Firms. There are currently 3 ETP Holders that qualify for the Tape B Tier 1 credit and would continue to receive the credit under the pricing tier if they maintain the same level of trading activity for the next three months. And as noted above, there are 54 firms that are both ETP Holders and OTP Holders and a number of such firms could qualify for Tape B Tier 1 credits. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder to increase participation in the Exchange's equities and options markets to qualify for the existing credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity. The Exchange believes that maintaining the current

[30] *See* New York Stock Exchange Price List, Routing Fee, at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.* NYSE charges a routing fee of $0.0035 per share, except that for member organizations that have adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined, the routing fee is $0.0030 per share.

[31] *See* Fee Schedule of NYSE Chicago, Inc., Section E.1., Routing Fee, at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf.*

[32] *See* NYSE National Schedule of Fees and Rebates, Section II, Routing Fees, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[33] *See* NYSE American Equities Price List, Section III, Fees for Routing for all ETP Holders, at *https://www.nyse.com/publicdocs/nyse/markets/nyseamerican/NYSE_America_Equities_Price_List.pdf.*

[34] There are currently 54 firms that are both ETP Holders and OTP Holders.

requirement for an additional three months could provide an incentive for other ETP Holders to submit additional liquidity on the Exchange and on NYSE Arca Options to qualify for the rebate. To the extent an ETP Holder participates on the Exchange but not on NYSE Arca Options, the Exchange believes that the proposal is still reasonable, equitable and not unfairly discriminatory with respect to such ETP Holder based on the overall benefit to the Exchange resulting from the success of NYSE Arca Options. In particular, such success would allow the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on NYSE Arca Options or not.

Routing Fees

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is designed to reflect the costs incurred by the Exchange for orders submitted by ETP Holders that remove liquidity from auctions conducted on away markets and would apply equally to all ETP Holders that choose to use the Exchange to route PO Orders to Nasdaq and Cboe BZX. Furthermore, the Exchange notes that routing through the Exchange is voluntary, and, because the Exchange operates in a highly competitive environment as discussed below, ETP Holders that do not favor the Exchange's pricing can readily direct order flow directly to Nasdaq or Cboe BZX or through competing venues or providers of routing services. The proposed change may impact the submission of orders to a national securities exchange, and to the extent that ETP Holders continue to submit PO Orders to the Exchange, the proposed rule change would not have a negative impact to ETP Holders trading on the Exchange because the proposed fee would be in line with the routing fee charged by the Exchange's affiliates. However, without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by ETP Holders.

Step Up Tier 4

The Exchange believes the proposed amendment to Step Up Tier 4 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. First, the Exchange is not proposing to adjust the amount of the Step Up Tier 4 credits, which will remain at the current level for all ETP Holders. Rather, the proposal caps an already high level of the credit paid for displayed liquidity in Tape B securities and is similar to the cap currently in place for Tape C securities that provide displayed liquidity. The Exchange believes the current level of credit would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefit all market participants.

LMM Credits

The Exchange believes the proposed rule change to amend the benchmark threshold to qualify for the incremental LMM credits is equitable because it provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, LMMs and ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Tape B Tier 1

The Exchange believes it is not unfairly discriminatory to extend the current CADV requirement for an additional three months for ETP Holders to qualify for per share credits, as the proposed change would be applied on an equal basis to all ETP Holders. Further, the Exchange believes that maintaining the current requirement for an additional period of time could provide an incentive for other ETP Holders to submit additional liquidity on the Exchange and on NYSE Arca Options to qualify for the rebate. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to maintain the CADV requirement at current levels to qualify for the Tape B Tier 1 credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the amended threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Routing Fees

The proposal to amend the routing fee for PO Orders routed to Nasdaq and adopting routing fees for PO Orders routed to Cboe BZX for execution in each market's opening or closing auction is not unfairly discriminatory because the fee would be applied on an equal basis to all ETP Holders that choose to send PO Orders to the Exchange. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed fees would be applied to all ETP Holders, who would all be charged the same fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Step Up Tier 4

The Exchange believes it is not unfairly discriminatory to cap the credit payable under Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed cap would be applied to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

LMM Credits

The Exchange believes it is not unfairly discriminatory to amend the benchmark threshold to qualify for the incremental LMM credits, as the amended requirements would apply on an equal basis to all LMMs. Further, the Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more

consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore incentivize LMMs to send more orders to the Exchange resulting in increased opportunities to earn incremental credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to amend the benchmark threshold to qualify for the incremental rebates neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed threshold would be applied to all similarly situated LMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no LMM already operating on the Exchange would be disadvantaged by this allocation of fees.

Finally, the submission of orders to the Exchange is optional for LMMs and ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[35] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for LMMs and ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [36]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed amendment to the volume requirement under Tape B Tier 1 and the proposed cap to the credit payable under Step Up Tier 4 would continue to incentivize market participants to direct providing displayed order flow to the Exchange. Further, as noted above, the Exchange would uniformly assess the routing fee on all ETP Holders who choose to route orders through the Exchange to Nasdaq or Cboe BZX for execution in an auction conducted on those markets. Finally, the Exchange believes that the amended benchmark to qualify for the incremental credit applicable to LMMs, and ETP Holders affiliated with such LMMs, would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs, to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed rule change would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's current market share of intraday trading (*i.e.,* excluding auctions) is less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [37] of the Act and subparagraph (f)(2) of Rule 19b–4 [38] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [39] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/*

[35] 15 U.S.C. 78f(b)(8).

[36] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(2).

[39] 15 U.S.C. 78s(b)(2)(B).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–21, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06298 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88434; File No. SR–ISE–2020–10]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Complex Orders

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to permit the Exchange to determine the availability of order types and time-in-force provisions and to add other existing order types to the list of single-leg and Complex Order types.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to: (1) Provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis; and (2) to add other existing order types to the list of single-leg and Complex Order types.

The Exchange proposes to add a sentence to Options 3, Section 14, Complex Orders, which states, ''The Exchange may determine to make certain order types and/or times-in-force available on a class or System basis.'' This sentence exists today within Nasdaq ISE, LLC (''ISE'') Options 3, Section 7, ''Types of Orders.'' [3] This proposed change is based on the rules of ISE Options 3, Section 7 and the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[4] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1(d),[5] Cboe Exchange, Inc. (''Cboe'') Rule 5.6(a) [6] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[7]

The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1(d) and (f), EDGX Options Rules 21.1(d) and (f), Cboe Rule 5.6(a) and C2 Rule 6.10(a), each of which provides these exchanges with substantially the

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88294 (February 26, 2020), 85 FR 12629 (March 3, 2020) (SR–ISE–2020–07).

[4] BZX Options Rule 21.1(d), Definitions, provides ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.'' BZX Options Rule 21.1(f), Definitions, provides ''The term 'Time in Force' shall mean the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (l) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis.''

[5] EDGX Options Rule 21.1(d), Definitions, provides, ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.'' EDGX Options Rule 21.1(f), Definitions, provides, ''The term 'Time in Force' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[6] Cboe Rule 5.6, Order Types, Order Instructions, and Times-in-Force at subsection (a), Availability, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis.''

[7] C2 Rule 6.10, Availability of Orders, at subsection (a) provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

same flexibility. This rule text is also consistent with ISE Rules at Options 3, Section 7.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

The Exchange also proposes to add to Options 3, Section 7 at proposed (v)-(y) and Options 3, Section 14(b) at proposed (16), (17) and (18), references to various existing order types that may be entered into various auction mechanisms on ISE. Specifically, the Exchange proposes to add a reference to both single-leg and Complex Orders entered into the Price Improvement Mechanism, Facilitation Mechanism and Solicited Order Mechanism. These order types exist today within the ISE Rules, however, unlike other order types, they are not mentioned within Options 3, Sections 7 or 14, which list the single-leg and Complex Orders, respectively, available for trading on ISE. Further, the Exchange also proposes to add the Block Order type to Options 3, Section 7 to complete the list of available order types that may be entered into an auction mechanism. The Exchange proposes to add the following rule text into Options 3, Section 7:

(v) Block Order. A Block Order is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a).

(w) Facilitation Order. A Facilitation Order is an order entered into the Facilitation Mechanism as described in Options 3, Section 11(b).

(x) SOM Order. A SOM Order is an order entered into the Solicited Order Mechanism as described in Options 3, Section 11(d).

(y) A PIM Order. A PIM Order is an order entered into the Price Improvement Mechanism as described in Options 3, Section 13(a).

The Exchange proposes to add the following rule text into Options 3, Section 14:

(16) Complex Facilitation Order. A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c).

(17) Complex SOM Order. A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e).

(18) Complex PIM Order. A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e).

The Exchange believes the addition of this rule text will make clear that these order types are available.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[10]

The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

This provision was added to all 6 Nasdaq affiliated markets for the simple markets[11] and therefore will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with substantially the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2 as well as ISE.[12] The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple Nasdaq affiliated exchanges and promotes a fair and orderly national options market system. This proposal does not present any novel or unique issues because other exchanges have substantially similar rules.[13]

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The proposal to add a references to all existing order types that may be entered into auctions into Options 3, Sections 7 and 14 is consistent with the Act. The Exchange believes the addition of the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the addition of the Complex Facilitation Order type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14 will make clear to

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

[11] *See* Nasdaq Phlx LLC, The Nasdaq Options Market, LLC, Nasdaq BX, Inc., ISE, Nasdaq GEMX, LLC and Nasdaq MRX, LLC Rules at Options 3, Section 7.

[12] *See* notes 3–7 above.

[13] *Id.*

market participants the various types of single-leg order and Complex Orders that may be transacted on ISE. The descriptions of these order types merely point at the existing mechanisms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[14] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

The proposal to add the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the Complex Facilitation type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14b does not impose an undue burden on competition. The addition of these order types would complete the list of single-leg and Complex Order types, which are available to all market participants, and are merely being referenced within the order type rules for greater transparency.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange believes that the proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis, allowing the Exchange to address the specific characteristics of different classes and different market conditions. According to the Exchange, this would ensure that the appropriate order types and times-in-force are tailored to the different class characteristics and mitigate risks associated with changing market conditions. The Exchange also believes that referencing all single-leg and Complex Order types makes clear which order types are available to all market participants. Moreover, the Exchange represents that the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants, and provides the Exchange with substantially the same flexibility as the rules of other exchanges. Lastly, the Exchange argues that waiver of the 30-day operative delay will permit the Exchange to immediately use this ability to make certain order types available and unavailable, as well as enable the Exchange to remain competitive as markets and market conditions evolve. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–10, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06296 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88448/March 20, 2020]

Order Under Section 17A and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder

The Commission understands from transfer agents and their representatives, as well as other persons, that COVID–19 may present challenges in timely meeting certain of their obligations under the federal securities laws. In light of this, we are issuing this Order to address the currently anticipated needs of transfer agents (and of other persons with regard to Exchange Act section 17(f)(2) and Rule 17f–2), that have been directly or indirectly affected by COVID–19.

Section 36 of the Exchange Act authorizes the Commission, by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of Section 17A or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency [1] finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Transfer agents and other persons who are unable to meet a deadline as extended by this relief, or in need of additional assistance, should contact the Division of Trading and Markets at (202) 551–5777 or *tradingandmarkets@sec.gov.*

I. Time Period for the Relief

The time period for the relief specified in Section II of this Order is as follows:

- With respect to those transfer agents and other persons impacted by COVID–19, the period from and including March 16, 2020, to May 30, 2020.
- The Commission may extend the time period during which this relief applies, with any additional conditions the Commission deems appropriate.

II. Compliance With Sections 17A and 17(f) of the Exchange Act

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents and other regulated persons relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities and maintaining records of investor ownership. As a result of issues related to COVID–19, registered transfer agents and other persons directly affected by COVID–19 may have difficulty complying with some or all of their regulatory obligations. In addition, registered transfer agents indirectly affected by COVID–19 may be unable to conduct business with entities or security holders who themselves have been directly or indirectly affected, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of these challenges, the Commission recognizes that the need to comply with Section 17A and Section 17(f) of the Exchange Act, as well as the rules promulgated thereunder, may present compliance issues for those affected by COVID–19. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to provide temporary relief from certain regulatory provisions. This Order temporarily exempts: (1) Transfer agents from the requirements of Sections 17A and 17(f)(1) of the Exchange Act, as well as Rules 17Ad–1 through 17Ad–11, 17Ad–13 through 17Ad–20, and 17f–1 thereunder (the ''Transfer Agent Exempted Provisions''); and (2) transfer agents and other persons subject to such requirements, from the requirements of Section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder (the ''Fingerprinting Exempted Provisions'') (collectively, the Transfer Agent Exempted Provisions and Fingerprinting Exempted Provisions are the ''Exempted Provisions''). The Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Accordingly, *it is ordered,* pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is unable to comply with any or all of the Exempted Provisions, as applicable, due to COVID–19, as well as any other person subject to the Fingerprinting Exempted Provisions, is hereby temporarily exempted from complying with such provisions for the period from and including March 16, 2020 to May 30, 2020 where the conditions below are satisfied.

Conditions

(a) A registrant or other person relying on this Order must provide written notification to the Commission by May 30, 2020 of the following:

(1) The registrant or other person is relying on this Order;

(2) A description of the specific Exempted Provisions the registrant or other person is unable to comply with and a statement of the reasons why, in good faith, the registrant or other person

[22] 17 CFR 200.30–3(a)(12), (59).

[1] Section 3(a)(34)(B) of the Exchange Act defines ''appropriate regulatory authority.''

is unable to comply with such Exempted Provisions; and

(3) If a transfer agent knows or believes that it has been unable to maintain the books and records it is required to maintain pursuant to Section 17A and the rules thereunder, a complete and accurate description of the type of books and records that were not maintained, the names of the issuers for whom such books and records were not maintained, the extent of the failure to maintain such books and records, and the steps taken to ameliorate any such failure to maintain such books and records.

(b) The Exempted Provisions do not include, and this order does not provide relief from, Rule 17Ad–12 under the Exchange Act. Transfer agents affected by COVID–19 that have custody or possession of any security holder or issuer funds or securities shall continue to comply with the requirements of Rule 17Ad–12 under the Exchange Act. If a transfer agent's operations, facilities, or systems are significantly affected as a result of COVID–19 such that the transfer agent believes its compliance with Rule 17Ad–12 could be negatively affected, to the extent possible, all security holder or issuer funds that remain in the custody of the transfer agent should be maintained in a separate bank account held for the exclusive benefit of security holders until such funds are properly processed, transferred, or remitted.

The notification required under (a) above shall be emailed to: *tradingandmarkets@sec.gov.*

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected security holders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should place a notice on their websites or provide toll free numbers to respond to inquiries.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06292 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88459; File No. SR–CBOE–2020–010]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Adopt Flexible Exchange Options (''FLEX Options'') With a Contract Multiplier of One (''FLEX Micro Options'')

March 23, 2020.

On February 4, 2020, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt flexible exchange options (''FLEX options'') with a contract multiplier of one (''FLEX Micro Options'').

The proposed rule change was published for comment in the **Federal Register** on February 24, 2020.[3] The Commission has received no comments on the proposed rule change. On March 11, 2020, the Exchange withdrew the proposed rule change (SR–CBOE–2020–010).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06391 Filed 3–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88443; File No. SR–ISE–2020–12]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchanges Pricing Schedule at Options 7, Section 4, Titled Complex Order Fees and Rebates

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 4, titled ''Complex Order Fees and Rebates.''

The Exchange originally filed the proposed pricing changes on March 2, 2020 (SR–ISE–2020–09). On March 10, 2020, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 4, titled ''Complex Order Fees and Rebates'' to decrease certain rebate tiers to attract Priority Customer Complex Order flow to ISE.

Today, ISE offers a nine tier Priority Customer Complex Order rebate structure as follows:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88232 (Feb. 18, 2020), 85 FR 10491.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Priority customer complex tier (7) (13) (16)	Total affiliated member or affiliated entity complex order volume (excluding crossing orders and responses to crossing orders) calculated as a percentage of customer total consolidated volume	Rebate for select symbols (1)	Rebate for non-select symbols (1) (4)
Tier 1	0.000%–0.200%	($0.25)	($0.40)
Tier 2	Above 0.200%–0.400%	(0.30)	(0.55)
Tier 3	Above 0.400%–0.600%	(0.35)	(0.70)
Tier 4	Above 0.600%–0.750%	(0.40)	(0.75)
Tier 5	Above 0.750%–1.000%	(0.45)	(0.80)
Tier 6	Above 1.000%–1.500%	(0.46)	(0.80)
Tier 7	Above 1.500%–2.000%	(0.48)	(0.80)
Tier 8	Above 2.000%–2.75%	(0.50)	(0.85)
Tier 9	Above 2.75%	(0.52)	(0.85)

Specifically, with respect to the Tier 4 Priority Customer Complex Order rebate, a Member must execute a Complex Order volume percentage of above 0.600% to 0.750% to qualify for the $0.40 per contract rebate in Select Symbols and a $0.75 per contract rebate in Non-Select Symbols. Also, with respect to the Tier 3 Priority Customer Complex Order rebate, a Member must execute a Complex Order volume percentage [3] of above 0.400 to 0.600% to qualify for a $0.35 per contract rebate in Select Symbols and an $0.70 per contract rebate in Non-Select Symbols. The Exchange proposes to amend the Tier 4 rebate from above 0.600% to 0.750% to above 0.450% to 0.750%. Further, the Exchange proposes to make a corresponding change to the qualifications for the Tier 3 volume qualification to amend it from above 0.400 to 0.600% to above 0.400 to 0.450% to align the qualifications for Tier 3 to the qualifications proposed for Tier 4.

Specifically, with respect to the Tier 6 Priority Customer Complex Order rebate, a Member must execute a Complex Order volume percentage of above 1.000% to 1.500% to qualify for a $0.46 per contract rebate in Select Symbols and an $0.80 per contract rebate in Non-Select Symbols. Also, with respect to the Tier 7 Priority Customer Complex Order rebate, a Member must execute a Complex Order volume percentage of above 1.500% to 2.000% to qualify for the $0.48 per contract rebate in Select Symbols and an $0.80 per contract rebate in Non-Select Symbols. The Exchange proposes to amend the Tier 7 volume qualification from above 1.500% to 2.000% to above 1.350% to 2.000%. Further, the Exchange proposes to make a corresponding change to the qualifications for the Tier 6 rebate to amend it from above 1.000% to 1.500% to above 1.000% to 1.350% to align the qualifications for Tier 6 to the qualifications proposed for Tier 7.

Further, with respect to the Priority Customer Complex Tier 8 rebate, a Member must execute a Complex Order volume percentage of above 2.000% to 2.75% to qualify for the $0.50 per contract rebate in Select Symbols and an $0.85 per contract rebate in Non-Select Symbols. Also, with respect to the Priority Customer Complex Tier 9 rebate, a Member must execute a Complex Order volume percentage of above 2.75% to qualify for the $0.52 per contract rebate in Select Symbols and an $0.85 per contract rebate in Non-Select Symbols. The Exchange proposes to amend the Tier 9 volume qualification from above 2.75% to above 2.600%. Further, the Exchange proposes to make a corresponding change to the qualifications for the Tier 8 rebate to amend it from above 2.000% to 2.75% to above 2.000% to 2.600% to align the qualifications for Tier 8 to the qualifications proposed for Tier 9.

The Exchange notes that all Members may elect to qualify for the Priority Customer Complex Order rebates by submitting Complex Order flow to the Exchange and earning a rebate on their Priority Customer Complex Order volume. Accordingly, the proposed changes are designed to increase the amount of Complex Order flow that Members submit to ISE, particularly Priority Customer Complex Order volume, and further encourage Members to contribute to a deeper, more liquid market to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For

[3] Complex Order volume percentage is described as Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one options venue to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.[8]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to decrease the volume requirements for Priority Customer Complex Order rebate Tiers 4, 7 and 9, and also make conforming changes to Priority Customer Complex Order rebate Tiers 3, 6 and 8 to align those tier qualifications with the proposed qualification amendments to Tiers 4, 7 and 9, is reasonable. The Exchange believes that the proposed amendments to Tiers 4, 7 and 9 of the Priority Customer Complex Order rebate program, which lower the volume qualifications for those tiers, represents a reasonable attempt by the Exchange to fortify participation in the Priority Customer Complex Order rebate program. In particular, the Exchange's proposal is intended to encourage Members to submit additional amounts of Priority Customer Complex Order volume to obtain a higher rebate. The Exchange notes that the proposed amendments should not result in lower rebates for any Member submitting the same volume as the Member submitted in the prior month. The Exchange is lowering the qualification criteria for various tiers within Options 7, Section 4 to provide a more deterministic outcome for an array of Members to qualify for the same Customer Complex Order rebates as in prior months. The Exchange believes that lowering the volume requirements for Tiers 4, 7 and 9 of the Priority Customer Complex Order rebate program will further incentivize Members to transact additional Complex Order flow, including Priority Customer Complex Order flow, to achieve higher rebates. Lowering the volume requirements for Tiers 4, 7, and 9 of the Priority Customer Complex Order rebate program makes these tiers more achievable and attractive to existing and potential program participants. As noted above, the Priority Customer Complex Order rebate program is optional and available to all Members that choose to transact Complex Order flow on ISE in order to earn a rebate on their Priority Customer Complex Order volume. To the extent the program, as modified, continues to attract Complex Order volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange's proposal to decrease the volume requirements for Priority Customer Complex Order rebate Tiers 4, 7 and 9, and also make conforming changes to Priority Customer Complex Order rebate Tiers 3, 6 and 8 to align those tier qualifications with the proposed qualification amendments to Tiers 4, 7 and 9, is equitable and not unfairly discriminatory. Any Member may choose to qualify for the rebate program by transacting the requisite amount of Priority Customer Complex Order flow on ISE. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (*i.e.,* to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. Furthermore, the proposed changes to the Priority Customer Complex Order rebate program to lower the volume requirements for Tiers 4, 7 and 9 are equitable and not unfairly discriminatory because any Member who transacts Priority Customer Complex Order flow on ISE may qualify for the rebates. The Tier 1 Priority Customer Complex Order rebate does not require a minimum amount of volume to qualify for the rebate tier. Any volume up to .20% would earn a Tier 1 Priority Customer Complex Order rebate of $0.25 for Select Symbols and a $0.40 rebate in Non-Select Symbols. The Exchange believes that the proposed changes will further incentivize all Members to transact a significant amount of Priority Customer Complex Order volume on ISE in order to obtain the highest range of Priority Customer Complex Order rebate offered under this program. The Exchange anticipates all Members that currently qualify for these rebates will continue to do so under this proposal. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. The Exchange notes that all market participants stand to benefit from increased liquidity as such increase promotes market depth, facilitates tighter spreads and enhances price discovery. Accordingly, the Exchange believes that the proposed amendments are reasonably designed to provide further incentives for all Members interested in meeting the tier criteria to submit additional Priority Customer Complex Order volume to achieve the higher rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed pricing amendments do not impose an intra-market burden on competition. The Exchange's proposal to decrease the volume requirements for Priority Customer Complex Order rebate Tiers 4, 7 and 9 and also make conforming changes to the qualifications for Tiers 3, 6 and 8 to align those qualifications with the proposed qualifications to Tiers 4, 7 and 9, does

[8] *See, generally,* Nasdaq Phlx LLC and The Nasdaq Options Market LLC as examples of options exchanges with tiered pricing structures.

not impose an intra-market burden on competition. Any Member may choose to qualify for the rebate program by transacting the requisite amount of Priority Customer Complex Order flow on ISE. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (*i.e.,* to qualify for the higher tiers) in order to earn a rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. Furthermore, the proposed changes to the Priority Customer Complex Order rebate program to lower the volume requirements for Tiers 4, 7 and 9 are equitable and not unfairly discriminatory because any Member who transacts Complex Order flow on ISE may qualify for the rebates. The Tier 1 Priority Customer Complex Order rebate does not require a minimum amount of volume to qualify for the rebate tier. Any volume up to .20% would earn a Tier 1 Priority Customer Complex Order rebate of $0.25 for Select Symbols and a $0.40 rebate in Non-Select Symbols. The Exchange anticipates all Members that currently qualify for these rebates will continue to do so under this proposal. The Exchange notes that all market participants stand to benefit from increased liquidity as such increase promotes market depth, facilitates tighter spreads and enhances price discovery.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–12 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06287 Filed 3–25–20; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88456; File No. SR–ISE–2020–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Removal of Obsolete Listing Rules

March 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 2, Options Market Participants; Options 3, Section 2, Units of Trading and Meaning of Premium Quotes and Orders; Options 3, Section 3, Minimum Trading Increments; Options 4, Section 5, Series of Options Contracts Open for Trading; Options 4A, Section 2, Definitions; Options 4A, Section 6, Position Limits for Broad-Based Index Options; Options 4A, Section 8, Position Limits for Foreign Currency Index Options; Options 4A, Section 10, Exercise Limits; Options 4A, Section 11, Trading Sessions; Options 4A, Section 12, Terms of Index Options Contracts; Options 6, Options Trade Administration; Options 6C, Section 3, Margin Requirements; Options 6C, Section 4, Meeting Margin Calls by Liquidation Prohibited; Options 9, Section 4, Disruptive Quoting and Trading Activity Prohibited; Options 9, Section 13, Position Limits; Options 9, Section 14, Exemptions from Position Limits; and Options 9, Section 15,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exercise Limits. Additionally, the Exchange proposes to add new sections at General 9 and Options 4B and reserve those sections.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules at Options 2, Options Market Participants; Options 3, Section 2, Units of Trading and Meaning of Premium Quotes and Orders; Options 3, Section 3, Minimum Trading Increments; Options 4, Section 5, Series of Options Contracts Open for Trading; Options 4A, Section 2, Definitions; Options 4A, Section 6, Position Limits for Broad-Based Index Options; Options 4A, Section 8, Position Limits for Foreign Currency Index Options; Options 4A, Section 10, Exercise Limits; Options 4A, Section 11, Trading Sessions; Options 4A, Section 12, Terms of Index Options Contracts; Options 6, Options Trade Administration; Options 6C, Section 3, Margin Requirements; Options 6C, Section 4, Meeting Margin Calls by Liquidation Prohibited; Options 9, Section 4, Disruptive Quoting and Trading Activity Prohibited; Options 9, Section 13, Position Limits; Options 9, Section 14, Exemptions from Position Limits; and Options 9, Section 15, Exercise Limits. Additionally, the Exchange proposes to add new sections at General 9 and Options 4B and reserve those sections. The various proposed changes will be discussed below.

Mini Options

The Exchange has not listed Mini Options in several years and is proposing to delete Mini Options listing rules and other ancillary trading rules related to the listing of Mini Options. The Exchange notes that it has no open interest in Mini Options.

Specifically, the Exchange proposes to amend the following ISE Rules related to Mini Options by deleting references to Mini Options within these rules: Options 3, Section 2(d), Units of Trading and Meaning of Premium Quotes and Orders; Options 3, Section 3, Minimum Trading Increments, at Supplementary Material .03; Options 4, Section 5, Series of Options Contracts Open for Trading, at Supplementary Material .13; Options 9, Section 13, Position Limits. at Supplementary Material .03; and Options 9, Section 14, Exemptions From Position Limits.

Foreign Currency Index

The Exchange removed [3] prior ISE Section 22, which was titled ''Rate-Modified Foreign Currency Options Rules'' and governed the listing and trading of foreign currency options on ISE. At this time, the Exchange is removing Options 4A, Section 8, which is being reserved, as well as the definition of Foreign Currency Index, within Options 4A, Section 2(h), as that reference is no longer necessary because the product is not available to be listed on ISE. References to Foreign Currency Index are also being removed from Options 3, Section 3, Minimum Trading Increments, at Supplementary Material .04; Options 4A, Section 10(a); Options 4A, Section 11(a) and (c); Options 4A, Section 12(e)(1); and Options 6C, Section 3(e).

Other Obsolete Listings

The Exchange proposes to amend Options 4A, Section 2 at Supplementary Material .01; Options 4A, Section 6(a); Options 4A, Sections 12(a)(4),[4] (a)(5)(ii), (b)(2) and (c)(1); and Options 4A, Section 12 at Supplementary Material .06 to remove a list of index options contracts that are no longer listed on ISE and have no open interest. The Exchange also proposes to list the reporting authority for Mini Nasdaq 100 Index, which currently does not appear on the list of index options with reporting authorities. The reporting authority for the Mini Nasdaq 100 is The Nasdaq Stock Market.

Rulebook Harmonization

The Exchange recently harmonized its Rulebook in connection with other Nasdaq affiliated markets. The Exchange proposes to reserve sections General 9 and Options 4B and certain other rules [5] within the ISE Rulebook to represent the presence of rules in similar locations in other Nasdaq affiliated Rulebooks (*e.g.*, Nasdaq Phlx LLC).[6] The addition of these reserved sections will align the various Nasdaq affiliated market Rulebooks.

Other Non-Substantive Amendments

The Exchange proposes to correct a typographical error within Options 6C, Section 4, Meeting Margin Calls by Liquidation Prohibited. The Exchange proposes to correct cross-references and numbering within Options 9, Section 4, Disruptive Quoting and Trading Activity Prohibited. Finally, the Exchange proposes to amend the names of certain securities which have been renamed within Options 9, Section 13 at Supplementary Material .01 and Options 9, Section 15 at Supplementary Material .01.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Mini Options

The Exchange's proposal to removal references to the listing and handling of Mini Options is consistent with the Act because Mini Options have not been listed in several years and thereby removing the references to the rules would render the rules more accurate and reduce potential investor confusion. Also, the Exchange notes that it has no open interest in Mini Options. In the event that the Exchange desires to list Mini Options in the future, it would file a rule change with the Commission to adopt rules to list Mini Options.

[3] *See* Securities Exchange Act Release No. 84516 (November 1, 2018), 83 FR 55771 (November 7, 2018) (SR–ISE–2018–91) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete ISE Section 22 of the Rulebook Entitled ''Rate-Modified Foreign Currency Options Rules'').

[4] The Exchange is relocating and renumbering the remaining listings within Options 4A, Section 12.

[5] The Exchange proposes to reserve Options 2, Sections 11–14; Options 4A, Sections 17–21; Options 6, Sections 8–13; Options 6C, Section 7; and Options 9, Section 24.

[6] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020-03) (''Phlx Rulebook Relocation Rule Change'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Foreign Currency Index

The Exchange's proposal to remove rules and references to the listing and handling of Foreign Currency Indexes is consistent with the Act because the listing rules for these products have been removed. Also, the Exchange notes that it has no open interest in Foreign Currency Indexes. In the event that the Exchange desires to list Foreign Currency Indexes in the future, it would file a rule change with the Commission.

Other Obsolete Listings

The Exchange's proposal to remove obsolete index options listings within Options 4A, Section 2 at Supplementary Material .01; Options 4A, Section 6(a); Options 4A, Sections 12(a)(4),[9] (a)(5)(ii), (b)(2) and (c)(1); and Options 4A, Section 12 at Supplementary Material .06 is consistent with the Act. These index option listings have not been listed in some time and there is no open interest. In the event that the Exchange desires to list any of the removed index options listings in the future, it would file a rule change with the Commission. Further, the proposal to list the reporting authority for Mini Nasdaq 100 Index, which is The Nasdaq Stock Market, will bring greater transparency to the Exchange's Rules and provide investors with greater information about that index.

Rulebook Harmonization

The Exchange's proposal to reserve new sections at General 9 and Options 4B within the Rulebook is a non-substantive amendment which aligns the numbering across Nasdaq affiliated Rulebooks to provide market participants with an ability to more readily locate rules.

Other Non-Substantive Amendments

The Exchange's proposal to correct typographical errors, correct cross-references and numbering and amend names of securities are non-substantive. These amendments are intended to reduce investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Mini Options

The Exchange's proposal to removal references to the listing and handling of Mini Options does not impose an undue burden on competition. Mini Options have not been listed in several years. Also, the Exchange notes that it has no open interest in Mini Options.

Foreign Currency Index

The Exchange's proposal to removal references to the listing and handling of Foreign Currency Indexes does not impose an undue burden on competition. Foreign Currency Indexes have not been listed in several years. Also, the Exchange notes that it has no open interest in Foreign Currency Indexes.

Other Obsolete Listings

The Exchange's proposal to remove obsolete index options listings within Options 4A, Section 2 at Supplementary Material .01; Options 4A, Section 6(a); Options 4A, Sections 12(a)(4),[10] (a)(5)(ii), (b)(2) and (c)(1); and Options 4A, Section 12 at Supplementary Material .06 does not impose an undue burden on competition. These index options listings have not been listed in some time and there is no open interest. Further, the proposal to list a reporting authority for Mini Nasdaq 100 Index, which is The Nasdaq Stock Market, will bring greater transparency to the Exchange's Rules.

Rulebook Harmonization

The Exchange's proposal to add reserved sections General 9 and Options 4B to the Rulebook is a non-substantive amendment which aligns the numbering across Nasdaq affiliated Rulebooks to provide market participants with an ability to more readily locate rules.

Other Non-Substantive Amendments

The Exchange's proposal to correct typographical errors, correct cross-references and numbering and amend names of securities are non-substantive amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2020–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[9] The Exchange is relocating and renumbering the remaining listings within Options 4A, Section 12.

[10] The Exchange is relocating and renumbering the remaining listings within Options 4A, Section 12.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–11 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06385 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88437; File No. SR–CBOE–2020–004]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating To Amend Chapter 7, Section B of the Rules, Which Contains the Exchange's Compliance Rule (''Compliance Rule'') Regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

March 20, 2020.

On January 17, 2020, Cboe Exchange, Inc. (''Cboe Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates May 5, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2020–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06299 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88447; File No. SR–CBOE–2020–023]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 5.24

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.24. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.24. Disaster Recovery

(a)–(d) No change.

(e) *Loss of Trading Floor.* If the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange will operate using this configuration only until the Exchange's trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except in accordance with paragraph (2) below and pursuant to Rule 5.26, as applicable.

(1) *Applicable Rules.* In the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force, including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G, and as follows (subparagraphs (A) through ([C]*D*) will until May 15, 2020):

(A) No change.

(B) with respect to complex orders in any exclusively listed index option class:

(1) Notwithstanding Rule 5.4(b), the minimum increment for bids and offers on complex orders with any ratio equal to or greater than one-to-twenty-five (0.04) and equal to or less than twenty-

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88105 (January 30, 2020), 85 FR 6600.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

five-to-one (25.00) is $0.01 or greater, which may be determined by the Exchange on a class-by-class basis, and the legs may be executed in $0.01 increments; and

(2) notwithstanding the definition of ''complex order'' in Rule 1.1, for purposes of Rule 5.33, the term ''complex order'' means a complex order with any ratio equal to or greater than one-to-twenty-five (0.04) and equal to or less than twenty-five-to-one (25.00); [and]

([3]*C*) the contract volume a Market-Maker trades electronically during a time period in which the Exchange operates in a screen-based only environment will be excluded from determination of whether a Market-Maker executes more than 20% of its contract volume electronically in an appointed class during any calendar quarter, and thus is subject to the continuous electronic quoting obligation, as set forth in Rule 5.52(d)[.]*; and*

(D) a TPH may execute a ''Related Futures Cross'' or ''RFC'' order, which is comprised of an SPX or VIX option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders, which is identified to the Exchange as being part of an exchange of option contracts for related futures positions. For purposes of RFC orders:

(1) In order to execute an RFC order:

(a) Until the time when System functionality described in subparagraph (b) is available, a TPH may execute an RFC order without exposure on the Exchange by inputting the execution into the Exchange's Clearing Editor; and

(b) at the time when System functionality is available, a TPH must submit the RFC order to the System, which may execute automatically on entry without exposure.

(2) A TPH may execute an RFC order pursuant to subparagraph (1) above only if: (a) Each option leg executes at a price that complies with Rule 5.33(f)(2), provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (b) each option leg executes at a price at or between the NBBO for the applicable series; and (c) the execution price is better than the price of any complex order resting in the COB, unless the RFC order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order. Rule 5.9 (related to exposure of orders on the Exchange) does not apply to executions of RFC orders. The System cancels an RFC order if it cannot execute.

(3) An RFC order may only be entered in the standard increment applicable to the class under Rule 5.4(b).

(4) For purposes of this subparagraph (D), an SPX or VIX options combo order is a two-legged order with one leg to purchase (sell) SPX or VIX calls and another leg to sell (purchase) the same number of SPX or VIX, respectively, puts with the same expiration date and strike price.

(5) For purposes of this subparagraph (D), an exchange of option contracts for related futures positions is a transaction entered into by market participants seeking to swap option positions with related futures positions with related exposures.

(a) A related futures position is a position in a futures contract with either the same underlying as or a high degree of price correlation to the underlying of the option combo in the RFC order so that execution of the option combos in the RFC order would serve as an appropriate hedge for the related future positions.

(b) In an exchange of contracts for related positions, one party(ies) must be the buyer(s) of (or the holder(s) of the long market exposure associated with) the options positions and the seller(s) of corresponding futures contracts and the other party(ies) must be the seller(s) of (or holder(s) of the short market exposure associated with) the options positions and the buyer(s) of the corresponding futures contracts. The quantity of the option contracts executed as part of the RFC order must correlate to the quantity represented by the related futures position portion of the exchange.

(6) An RFC order may be executed only during Regular Trading Hours and contemporaneously with the execution of the related futures position portion of the exchange.

(7) The transaction involving the related futures position of the exchange must comply with all applicable rules of the designated contract market on which the futures are listed for trading.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Rule 5.24 describes which Trading Permit Holders (''TPHs'') are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable.[3] Rule 5.24(e)(1) also currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,[4] and that all non-

[3] Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

[4] Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

trading rules of the Exchange would continue to apply.[5] The Exchange recently proposed additional exceptions to Rules that would not apply during a time in which the trading floor in inoperable.[6]

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and is currently operating in an all-electronic configuration. While the trading floor was open, floor brokers executed crosses of option combos (*i.e.,* synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts for related options positions. Market participants enter into these exchanges in order to swap related exposures. For instance, if a market participant has positions in VIX options but would prefer to hold a corresponding position in VIX futures (such as, for example, to reduce margin or risk related to the option positions), that market participant may swap its VIX options positions with another market participant(s)'s VIX futures positions that have corresponding risk exposure.[7]

A key element to these exchanges is that both of the option and future transactions must occur between the same market participants. When a floor broker represented the cross of the option contracts on the trading floor in accordance with applicable rules,[8] while in-crowd market participants had the opportunity to bid or offer to participate on the trade, those participants generally declined to participate upon hearing that the cross was part of an exchange of related futures contracts. While not required by the Rules, the Rules permit in-crowd market participants to decline to accept contracts that would otherwise be allocated to them.[9] The Exchange understands these market participants decline this allocation voluntarily, as they are aware of the need for market participants to execute these crosses cleanly for the transfer of risk between participants to be effective.[10] These are riskless exchanges that carry no profit or loss for the market participants that are party to the transactions, but rather are intended to provide a seamless method for market participants to reduce margin and capital requirements while maintaining the same risk exposure within their portfolios.

In response to feedback the Exchange has received from floor brokers and their customers regarding the inability to complete these crosses in the current all-electronic environment and the potential detrimental impact on those market participants as well as the market as a whole, the Exchange proposes to provide functionality that would permit TPHs to execute these crosses electronically while the trading floor is inoperable. Specifically, the Exchange proposes to amend Rule 5.24(e)(1) to provide that in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force, including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G,[11] and a Trading Permit Holder (''TPH'') may execute a ''Related Futures Cross'' or ''RFC'' order, which is comprised of an SPX or VIX option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders, which is identified to the Exchange as being part of an exchange of contracts for related futures positions.

For purposes of RFC orders:

• In order to execute an RFC order:

(a) Until the time when System functionality described in paragraph (b) is available, a TPH may execute an RFC order without exposure on the Exchange by inputting the execution into the Exchange's Clearing Editor; [12] and

(b) at the time when System functionality is available, a TPH must submit the RFC order to the System, which may execute automatically on entry without exposure.

The Exchange believes the functionality described in paragraph (b) will provide a seamless mechanism to execute these crosses, as it will provide for orders to be systematized and price protections will be systematically enforced. The Exchange needs a small amount of time to implement this functionality, and the functionality in paragraph (a) will provide an intermediate method for TPHs to effect these crosses while the Exchange completes the necessary System work, which it expects to occur the week of March 23.

• A TPH may execute an RFC order pursuant to the preceding bulleted paragraph only if: (a) Each option leg executes at a price that complies with Rule 5.33(f)(2),[13] provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (b) each option leg executes at a price at or between the national best bid or offer (''NBBO'') for the applicable series; and (c) the execution price is better than the price of any complex order resting in the complex order book (''COB''), unless the RFC order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order. Rule 5.9 (related to exposure of orders on the Exchange) does not apply to executions of RFC orders. The System cancels an RFC order if it cannot execute. This provision provides that RFC orders must execute in accordance with the same priority principles that apply to all other complex orders on the Exchange, which protects Priority Customer orders in the simple book and COB and prohibits trades through prices available in the book.

• An RFC order may only be entered in the standard increment applicable to the class under Rule 5.4(b). Therefore, RFC orders may only be submitted in the same increments as all other complex orders.

• For purposes of proposed subparagraph (D), an SPX or VIX options combo order is a two-legged order with one leg to purchase (sell) SPX or VIX calls and another leg to sell (purchase) the same number of SPX or

[5] Current Rule 5.24(e)(1)(B)(3) was intended to be Rule 5.24(e)(1)(C), and the proposed rule change corrects that incorrect subparagraph lettering and numbering.

[6] *See* Securities Exchange Act Release No. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020). The rule changes adopted in that filing are effective until May 15, 2020, unless extended. *See* Rule 5.24(e)(1).

[7] The transaction between the market participants for the futures positions occurs in accordance with the rules of the applicable designated contract market that lists the futures. *See, e.g.,* Cboe Futures Exchange LLC Rule 414.

[8] *See* Rules 5.85 and 5.87.

[9] *See* Rule 5.85(a)(2)(C)(iv).

[10] Additionally, many market-makers in the crowd that decline their allocations in these crosses often similarly engage in these exchanges for similar purposes, so may similarly benefit from the ability to execute these clean crosses.

[11] Like the other exceptions recently added to this provision, the proposed rule change would apply until May 15, 2020. The Exchange will monitor these transactions while the trading floor is inoperable. If the trading floor is inoperable beyond May 15, 2020, based on that review, the Exchange may submit a separate rule filing to extend the effectiveness of this rule.

[12] *See* Rule 6.6.

[13] Rule 5.33(f)(2) requires complex orders, which would include an RFC order, which by definition contains two option legs, to execution only if the execution price: At a net price: (i) That would cause any component of the complex strategy to be executed at a price of zero; (ii) worse than the synthetic best bid or offer (''SBBO'') or equal to the SBBO when there is a Priority Customer Order at the SBBO, except all-or-none complex orders may only execute at prices better than the SBBO; (iii) that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book; (iv) worse than the price that would be available if the complex order Legged into the Simple Book; or (v) that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy.

VIX, respectively, puts with the same expiration date and strike price.

• For purposes of proposed subparagraph (D), an exchange of options contracts for related futures positions is a transaction entered into by market participants seeking to swap option positions with related futures positions with related exposures.

(a) A related futures position is a position in a futures contract with either the same underlying as or a high degree of price correlation to the underlying of the option combo in the RFC order so that execution of the option combos in the RFC order would serve as an appropriate hedge for the related future positions.

(b) In an exchange of contracts for related positions, one party(ies) must be the buyer(s) of (or the holder(s) of the long market exposure associated with) the options positions and the seller(s) of corresponding futures contracts and the other party(ies) must be the seller(s) of (or holder(s) of the short market exposure associated with) the options positions and the buyer(s) of the corresponding futures contracts.[14] The quantity of the option contracts executed as part of the RFC order must correlate to the quantity represented by the related futures position portion of the exchange.

• An RFC order may be executed only during Regular Trading Hours and contemporaneously with the execution of the related futures position portion of the exchange.

• The transaction involving the related futures position of the exchange must comply with all applicable rules of the designated contract market on which the futures are listed for trading.

The Exchange understands from customers that the need to reduce risk is prevalent in VIX and SPX based on current market conditions, and have corresponding futures that could make these exchanges possible. For example, Cboe Futures Exchange LLC (''CFE'') permit these types of exchanges with respect to VIX futures pursuant to CFE Rule 414.[15] The proposed rule will require that the executing TPH identify these crosses as related to an exchange for related positions. As a result, the Exchange's Regulatory Division has put in place a regulatory review plan that will permit it to ensure any RFC orders that are executed are done in conjunction with an exchange of contract for related positions as required by the proposed rule.

Allowing TPHs, and particularly market-makers, to exchange synthetic futures (long (short) call, short (long) put—combos) for listed futures would replicate functionality that was previously available while Cboe was operating with an open outcry environment and would provide them with needed relief from the effect of the current exposure method (''CEM'') on the options market. The Exchange believes there are four reasons that make the proposed rule change for VIX and SPX products necessary and appropriate to maintain fair and orderly markets.

First, existing margin models do not fully recognize similar risks present in VIX and SPX derivatives positions held by the Exchange's liquidity providing community. This results in an overestimation of risk causing Clearing TPHs to require out-sized margin deposits from their market-maker clients, which restricts the liquidity market-makers can provide to the markets. Second, because the Clearing TPHs carrying these positions are bank-owned broker/dealers they are subject to further bank regulatory capital requirements pursuant to CEM, which result in these additional punitive capital requirements being passed on to their market-maker clients.[16] Third, as noted above, the Exchange's necessary response to the novel coronavirus global pandemic caused the Exchange to suspend open outcry trading, which has temporarily eliminated one method of executing necessary position reducing trades in VIX and SPX options on the trading floor. Finally, the historic levels of market volatility has made providing liquidity in VIX and SPX options immensely more challenging. The execution of options trades through in an electronic trading environment independent of the underlying futures hedge introduces additional risk to these transactions, which further reduces available liquidity a liquidity provider may provide to the market.

The Exchange believes the proposed rule change to make available functionality that will allow liquidity providers to execute trades tied to the underlying future (*i.e.* ''delta-neutral'') in a substantially similar manner as they were able to do on the trading floor will considerably reduce the risk inherent in trying to maintain a hedged portfolio. The combination of these four factors is negatively impacting the market-making community, which is reducing liquidity available in an extremely volatile market, which is when the market needs this liquidity the most. The Exchange believes the proposed rule change will temporarily reduce existing inefficiencies that have resulted from closure of the trading floor which will free up liquidity providers' much needed capital, which will benefit the entire market and all investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change will temporarily provide liquidity providers and other market participants with the ability to exchange SPX and VIX options positions with corresponding futures positions electronically in a substantially similar manner as they were able to do when the trading floor was open. These exchange allow market participants to reduce options positions in their hedged portfolios while maintain the same risk exposure, which would reduce the necessary capital associated with those positions and

[14] As proposed, one side of the cross will consist of one party, and the other side may consist of multiple parties.

[15] Currently, CME, which lists futures that correspond to SPX options, does not offer similar exchange opportunities. If CME implements a rule to permit them, the proposed rule change will permit TPHs to similar use RFC orders to swap exposure with corresponding futures that transact pursuant to CME's rules.

[16] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

permit them to provide more liquidity in the market. This additional liquidity may result in tighter spreads and more execution opportunities, which benefits all investors, particularly in the current volatile markets.

The Exchange believes that its proposal is also consistent with the Act in that it seeks to mitigate the potentially negative effects of the bank capital requirements on liquidity in the VIX and SPX markets. As described above, current regulatory capital requirements could potentially impede efficient use of capital and undermine the critical liquidity role that Market-Makers and other liquidity providers play in the SPX and VIX options market by limiting the amount of capital Clearing TPHs (''CTPHs'') allocate to clearing member transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their clearing members. In turn, this could force Market-Makers to reduce the size of their quotes and result in reduced liquidity in the market. The Exchange believes that permitting TPHs to reduce options positions in SPX and VIX options that will permit them to maintain a hedged portfolio would likely contribute to the availability of liquidity in the SPX and VIX options market and help ensure that these markets retain their competitive balance. The Exchange believes that the proposed rule would serve to protect investors by helping to ensure consistent continued depth of liquidity, particularly given current market conditions when liquidity is needed the most by investors.

The Exchange also believes the proposed rule change is consistent with the Act, because the proposed procedure is consistent with transactions that were otherwise permitted on the trading floor. The proposed rule would provide an electronic mechanism to replicate a process that was used on the trading floor. The proposed rule change imposes similar priority requirements to those in open outcry, which will protect Priority Customer orders and orders on top of the book that comprise the BBO. Additionally, the proposed rule change requires RFCs to execute in the same increments as all other complex orders. While these orders were exposed on the trading floor, the Exchange observed that market participants generally deferred their allocations to permit a clean cross, as that is necessary for these transactions to achieve their intended effect. Because these orders were generally not broken up on the trading floor, and because the purpose of these trades is unrelated to profits and losses (making the price at which the transaction is executed relatively unimportant like competitive trades), the Exchange believes it is appropriate to not expose these orders in an electronic setting. The Exchange believes the proposed rule change, which is limited to two classes the Exchange believes are being significantly impacted by the inability to execute these crosses, and to option orders that qualify as combos tied to related futures positions, is narrowly tailored for the specific purpose of facilitating the ability of liquidity providers to reduce positions requiring significant capital as a result of current bank regulatory capital requirements and the current historic levels of market volatility. The Exchange believes the proposed rule change will protect investors by helping to ensure continued depth of liquidity in the SPX and VIX options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, RFC orders will be available to all market participants. As discussed above, while the proposed rule change is directed at market-makers, all market participants may use these orders in the same manner as long as all criteria of the proposed rule are satisfied. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it will apply only to products currently listed on the Exchange. Additionally, the proposed order is intended to accommodate riskless transactions for which parties are not seeking price improvement, but rather looking to swap risk exposure to free up capital that will permit those parties to continue to provide liquidity to the market, and thus is not intended to have a competitive impact.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. Given current market conditions that have created historic levels of volatility, the Exchange believes the proposed rule change will help it maintain fair and orderly markets by providing an electronic avenue for market participants, particularly liquidity providers, to continue to provide liquidity to the VIX and SPX markets. Additionally, the Exchange understands market participants generally engage in these attempts to reduce their options positions in connection with the third-Friday of the month expirations, as well as part of their monthly capital calculations. The Exchange also understands that in connection with bank capital regulatory requirements, CTPHs recalculate their leverage ratios at the end of each calendar quarter, which could result in their need to add capital based on their clients' positions and further reduce availability liquidity. Waiver of the operative delay would permit TPHs to engage in these transactions in connection with the March 2020 expiration and expected first quarter CTPH capital recalculation,

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

which could permit continued liquidity and a fair and orderly market. As discussed above, the proposed rule change would apply temporarily, and only to two exclusively listed index option classes, during the time the trading floor is unavailable for open outcry trading. Waiver of the operative delay would allow the proposed changes, which are designed to help maintain fair and orderly markets, to be in effect immediately. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[26]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–023, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06291 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 16177, March 20, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, March 24, 2020 at 1:30 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Tuesday, March 24, 2020 at 1:30 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: March 24, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–06489 Filed 3–24–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88457; File No. SR–GEMX–2020–07]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Removal of Obsolete Listing Rules

March 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 2, Options Market Participants; Options 3, Section 2, Units of Trading and Meaning of Premium Quotes and Orders; Options 3, Section 3, Minimum Trading Increments; and Options 3, Section 15, Simple Order Risk Protections. Additionally, the Exchange proposes to add new sections at General 9 and Options 4B and reserve those sections.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend GEMX Rules at Options 2, Options Market Participants; Options 3, Section 2, Units of Trading and Meaning of Premium Quotes and Orders; Options 3, Section 3, Minimum Trading Increments; and Options 3, Section 15, Simple Order Risk Protections. Additionally, the Exchange proposes to add new sections at General 9 and Options 4B and reserve those sections. The various proposed changes will be discussed below.

Mini Options

The Exchange has not listed Mini Options in several years and is proposing to delete Mini Options listing rules and other ancillary trading rules related to the listing of Mini Options. The Exchange notes that it has no open interest in Mini Options.

Specifically, the Exchange proposes to amend the following GEMX Rules related to Mini Options by deleting references to Mini Options within these rules: Options 3, Section 2(c), Units of Trading and Meaning of Premium Quotes and Orders; and Options 3, Section 3, Minimum Trading Increments, at Supplementary Material .03. The Exchange also proposes to re-letter (b) as (c).

Foreign Currency Index

The Exchange removed [3] prior GEMX Section 22, which was titled ''Rate-Modified Foreign Currency Options Rules'' and governed the listing and trading of foreign currency options on GEMX. At this time, the Exchange is removing a reference that is no longer necessary within Options 3, Section 3, Minimum Trading Increments, at Supplementary Material .02, because the product is not available to be listed on GEMX.

Rulebook Harmonization

The Exchange recently harmonized its Rulebook in connection with other Nasdaq affiliated markets. The Exchange proposes to reserve sections General 9 and Options 4B and certain other rules [4] within the GEMX Rulebook to represent the presence of rules in similar locations in other Nasdaq affiliated Rulebooks (*e.g.* Nasdaq Phlx LLC) [5]. The addition of these reserved sections will align the various Nasdaq affiliated market Rulebooks.

Other Non-Substantive Amendments

The Exchange proposes to delete duplicative text within Options 3, Section 15, Simple Order Risk Protections. Current Options 3, Section 15(c) appears in Section 15(a) and current Options 3, Section 15(d) appears in Options 3, Section 15(a)(1)(C).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Mini Options

The Exchange's proposal to removal references to the listing and handling of Mini Options is consistent with the Act because Mini Options have not been listed in several years and thereby removing the references to the rules would render the rules more accurate and reduce potential investor confusion. Also, the Exchange notes that it has no open interest in Mini Options. In the event that the Exchange desires to list Mini Options in the future, it would file a rule change with the Commission to adopt rules to list Mini Options.

Foreign Currency Index

The Exchange's proposal to remove rules and references to the listing and handling of Foreign Currency Indexes is consistent with the Act because the listing rules for these products have been removed. Also, the Exchange notes that it has no open interest in Foreign Currency Indexes. In the event that the Exchange desires to list Foreign Currency Indexes in the future, it would file a rule change with the Commission.

Rulebook Harmonization

The Exchange's proposal to reserve new sections at General 9 and Options 4B within the Rulebook is a non-substantive amendment which aligns the numbering across Nasdaq affiliated Rulebooks to provide market participants with an ability to more readily locate rules.

Other Non-Substantive Amendments

The Exchange's proposal to remove duplicative text within Options 3, Section 15 is non-substantive and is intended to reduce investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Mini Options

The Exchange's proposal to removal references to the listing and handling of Mini Options does not impose an undue burden on competition. Mini Options have not been listed in several years. Also, the Exchange notes that it has no open interest in Mini Options.

Foreign Currency Index

The Exchange's proposal to removal references to the listing and handling of Foreign Currency Indexes does not impose an undue burden on competition. Foreign Currency Indexes have not been listed in several years. Also, the Exchange notes that it has no open interest in Foreign Currency Indexes.

Rulebook Harmonization

The Exchange's proposal to add reserved sections General 9 and Options 4B to the Rulebook is a non-substantive amendment which aligns the numbering across Nasdaq affiliated Rulebooks to provide market participants with an ability to more readily locate rules.

Other Non-Substantive Amendments

The Exchange's proposal to remove duplicative text within Options 3, Section 15 is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

[3] *See* Securities Exchange Act Release No. 84791 (December 11, 2018), 83 FR 64611 (December 11, 2018) (SR–GEMX–2018–41) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete GEMX Section 22 of the Rulebook).

[4] The Exchange proposes to reserve Options 2, Sections 11–14 and Options 6, Section 8–13.

[5] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020–03) (''Phlx Rulebook Relocation Rule Change'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2020–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2020–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2020–07 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06388 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88441; File No. SR–NYSE–2020–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Suspend Until June 30, 2020 the Application of Its Continued Listing Requirement With Respect to Global Market Capitalization

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to suspend until June 30, 2020 the application of its continued listing requirement that companies must maintain an average global market capitalization over a consecutive 30 trading-day period of at least $15 million (the ''Market Capitalization Standard''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The U.S. and global equities markets have experienced unprecedented market-wide declines as a result of the ongoing spread of COVID–19. As a consequence, since the commencement of the current market turbulence in the last week of February 2020, the Exchange has experienced an unusually high number (as compared to historical levels) of listed companies that are in imminent danger of immediate suspension and delisting under Section 802.01B of the Manual for failure to comply with the Market Capitalization Standard.[3]

In response to the conditions described above, the Exchange proposes

[3] Section 802.01B of the Manual states that ''the Exchange will promptly initiate suspension and delisting procedures with respect to a company (including the issuer of an Equity Investment Tracking Stock) that is listed under any financial standard set out in Sections 102.01C or 103.01B if a company is determined to have average global market capitalization over a consecutive 30 trading-day period of less than $15,000,000, regardless of the original standard under which it listed. A company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion.''

to suspend, until June 30, 2020, the application of the Market Capitalization Standard. The extreme volatility and the precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets could lead to a high number of securities being immediately suspended from trading and delisted during a short period of highly volatile markets. The proposed suspension of the Market Capitalization Standard until June 30, 2020 will provide temporary relief to these companies and their shareholders in response to these extraordinary market conditions.

Currently, when a company is identified as being noncompliant with the Market Capitalization Standard, trading in its securities is immediately suspended and the company is subject to delisting. Such a company that is noncompliant with the Market Capitalization Standard is not eligible to submit a plan to regain compliance pursuant to Sections 802.02 and 802.03 of the Manual. However, while its securities are suspended from trading, such company may appeal its delisting to a Committee of the Board of Directors of the Exchange. The proposed suspension of the Market Capitalization Standard will not affect the status of any company that has been formally notified for noncompliance with the Market Capitalization Standard and is currently in the Exchange's delisting appeal process prior to the date of this filing.

Instead, under the proposed suspension of the Exchange's Market Capitalization Standard, companies would not be notified of new events of noncompliance with the Market Capitalization Standard during the suspension period.[4] Following the temporary rule suspension, any new events of noncompliance with the Exchange's Market Capitalization Standard would be determined based on a consecutive 30 trading-day period commencing on or after July 1, 2020.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the public interest and the interests of investors, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a result of uncertainty related to the ongoing spread of the COVID–19 virus, the prices of securities listed on U.S. exchanges are experiencing rapid and significant declines. The proposed rule change is designed to reduce uncertainty regarding the ability of certain companies to remain listed on the NYSE during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market. All companies listed on the Exchange that fall below the Market Capitalization Standard as of the time of filing of this proposal would be eligible to take advantage of the proposed suspension of the Market Capitalization Standard.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to reduce uncertainty for certain companies and their shareholders regarding the ability of certain securities to remain listed on the NYSE during the current highly unusual market conditions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing.

The Exchange stated that the proposed rule change is designed to respond to the unprecedented uncertainty and resulting market declines related to the global spread of the COVID–19 virus. In support of its request to waive the 30-day operative delay, the Exchange stated that the markets have already triggered four Level 1 Market Wide Circuit Breaker Halts in one week, which is unprecedented. According to the Exchange, given the ongoing uncertainty relating to the global spread of the COVID–19 virus, the Exchange has no way of knowing whether there will be additional market declines that would result in large numbers of companies unexpectedly falling below the Market Capitalization Standard in the immediate future. The Exchange stated that if that were to occur, such companies would be subject to immediate suspension and delisting. The proposal would suspend, until June 30, 2020, the application of the Market Capitalization Standard for all listed companies that fall below this standard on or after the effective date of this filing. The Exchange stated that waiver of the 30-day operative delay would avoid the immediate suspension and delisting of companies falling below the

[4] A company would continue to be subject to delisting for failure to comply with other listing requirements.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five business day notification requirement for this proposed rule change.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

Market Capitalization Standard as of a result of these unprecedented market conditions, and reduce the level of uncertainty of listed issuers and their investors with respect to their continued listing status. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–21, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06303 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88438; File No. SR–CboeBYX–2020–005]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule ("Compliance Rule") Regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

March 20, 2020.

On January 22, 2020, Cboe BYX Exchange, Inc. ("BYX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates May 5, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBYX–2020–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06300 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88100 (January 30, 2020), 85 FR 6624.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88433; File No. SR–ICEEU–2020–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Finance Procedures (the ''Finance Procedures'')

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I and II below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited is proposing to amend the cash instruction deadline for USD set out in Section 6.1(e) of the Finance Procedures to be 11:45 Eastern time, rather than 16:45 London time, as set out in Exhibit 5.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed amendment is to amend the cash instruction deadline for USD cash in Section 6.1(e) of the Finance Procedures to be 11:45 Eastern time instead of 16:45 London time. Under most circumstances, 11:45 Eastern time is the same as 16:45 London time. However, ICE Clear Europe is proposing the amendment to avoid an unintended change in the applicable deadline as a result of the different start dates for daylight savings time in the United States and the United Kingdom. In the absence of the amendment, the temporary change in time difference between the US and UK would cause the deadline to move to 12:45 Eastern time for the period until summer time commences in the UK.

The change would thus allow ICE Clear Europe to maintain its current (Eastern time) deadline for USD instructions regardless of any change in the time difference between local time in London and local time in New York in connection with differences in dates for daylight saving time in the US and UK. In ICE Clear Europe's view, the 11:45 a.m. deadline for USD cash instructions facilitates ICE Clear Europe's ongoing USD cash management and investment activities, particularly in circumstances where the market may be volatile.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[7] In particular, Section 17A(b)(3)(F) of the Act [8] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments would facilitate continued regular settlement operations between the Clearing House and its Clearing Members in USD by avoiding an unintended change in the USD instruction deadline as a result of temporary changes in the time difference between the US and the UK. The amendments would also facilitate ICE Clear Europe's ongoing USD cash management and investment activities, and help ensure that, particularly during times of market volatility, the Clearing House would continue to have the operational capacity to effect settlements with each Clearing Member. As such, the amendment would promote the prompt and accurate clearance and settlement of transactions. By facilitating the Clearing House's investment and cash management activities, the amendments are also consistent with the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, and will generally further the protection of investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendment would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are being proposed to maintain the usual USD cash instruction (Eastern time) deadline notwithstanding temporary changes in the time difference between the US and UK. As a result, ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that ICE Clear Europe has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

Because the Commission believes that the proposed rule change would merely maintain the usual USD cash instruction deadline notwithstanding temporary changes in the time difference between the US and UK, it would promote the prompt and accurate clearance and settlement of transactions by facilitating the ICEEU's investment and cash management activities and be consistent with the obligation to safeguard securities and funds in the custody or control of ICEEU or for which it is responsible, and would generally further the protection of investors and the public interest. Further, the Commission does not believe that the proposed rule change would impose any new requirements on clearing members it would not burden competition.

Additionally, because such a temporary change in time difference is currently in effect, and will last until March 27, 2020, the Commission believes that prompt implementation of the proposal change is necessary and appropriate and that a 30-day delay would serve no purpose. Further, the Commission believes that any delay in the operation of the proposed rule change would be inconsistent with the goal of maintaining the certainty of the current cash deadlines. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[10]

[9] ICE Clear Europe has requested that the Commission waive the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b–4(f)(6)(iii) so that the proposed rule change may become effective and operative upon filing with the Commission, which the Commission has done. Moreover, for purposes only of these waivers, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] For these same reasons, the Commission waives the five-day pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2020–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2020–004 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06295 Filed 3–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88445; File No. SR–CboeEDGX–2020–005]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule (''Compliance Rule'') Regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''), To Be Consistent With Certain Proposed Amendments To and Exemptions From the CAT NMS Plan as Well as to Facilitate the Retirement of Certain Existing Regulatory Systems

March 20, 2020.

On January 22, 2020, Cboe EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88103 (January 30, 2020), 85 FR 6640.

[4] 15 U.S.C. 78s(b)(2).

change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates May 5, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGX–2020–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06288 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88440; File No. SR–CboeBZX–2020–011]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule ("Compliance Rule") Regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

March 20, 2020.

On January 22, 2020, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates May 5, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2020–011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06302 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88444; File No. SR–NYSE–2020–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7.35A, 7.35B, and 7.35C for a Temporary Period

March 20, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 20, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 7.35A, 7.35B, and 7.35C for a temporary period that begins March 23, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88101 (January 30, 2020), 85 FR 6589.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes, for a temporary period that begins March 23, 2020, when the Trading Floor facilities will have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, to:

- Suspend the current price and volume parameters set forth in Rules 7.35A and 7.35B restricting DMMs from effecting a Core Open, Trading Halt, or Closing Auction;
- widen the percentage price parameters for when a DMM may effect a Core Open, Trading Halt, or Closing Auction electronically to 10%;
- suspend the requirement to publish pre-opening indications; and
- establish the Auction Collars for an Exchange-facilitated Trading Halt Auction following a Level 1 or Level 2 market-wide circuit breaker halt [4] at the greater of 10% or $0.15.

Current rules already provide for DMMs to effect Auctions electronically without any price or volume limitations, but only on a temporary basis for the trading day on which the suspension was declared. The Exchange is proposing these changes only for the period when the NYSE Trading Floor has temporarily closed as a precautionary measure to reduce the spread of COVID–19.

The Exchange also proposes a non-substantive amendment to correct rule cross references in Rule 7.35B(j)(1)(A) and (B).

Background

NYSE Trading Floor Temporarily Closes March 23, 2020

Since March 9, 2020, markets worldwide are experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID–19. In the U.S. equity markets, Level 1 MWCB Halts have been triggered under Rule 7.12 on March 9, 2020, March 12, 2020, March 16, 2020, and March 18, 2020.

Beginning on March 16, 2020, to slow the spread of COVID–19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country. For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[5] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

Because the Trading Floor facilities will be closed, Floor brokers will not be able to enter orders on the Trading Floor.[6] As a result, there will not be any Floor Broker Participants in allocations and there will not be any order types unique to Floor brokers, such as D Orders.[7] In addition, because DMMs will not be on the Trading Floor, DMMs will not engage in any manual actions, such as facilitating an Auction manually or publishing pre-opening indications before a Core Open or Trading Halt Auction. As they do today, DMMs will be able to participate electronically both intraday and for Auctions.

Because DMMs would not be physically present on the Trading Floor, DMMs would facilitate Auctions electronically as provided for in Rules 7.35A and 7.35B. If a DMM does not facilitate an Auction electronically pursuant to the parameters specified in those rules, the Exchange would facilitate the Auction pursuant to Rule 7.35C.

DMM-Facilitated Core Open and Trading Halt Auctions

Rule 7.35A(c)(1) sets forth the circumstances when a DMM may not effect a Core Open or Trading Halt Auction electronically. Relevant to this proposed rule change, a DMM cannot electronically effect a Core Open or Trading Halt Auction:

- If the Core Open or Trading Halt Auction Price would be more than 4% away from the Consolidated Last Sale Price (See Rule 7.35A(c)(1)(G)).
- If the paired volume for that Auction would be more than: (i) 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter; or (ii) 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter (See Rule 7.35A(c)(1)(H)).

Under current rules, the DMM may effect a Core Open or Trading Halt Auction electronically if the Auction Price will be up to 8% away from the Consolidated Last Sale and without any volume limitations under the following circumstances:

- If as of 9:00 a.m., the E-mini S&P 500 Futures are +/− 2% from the prior day's closing price of the E-mini S&P 500 Futures, or
- If the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market.

In addition, if the CEO of the Exchange or his or her designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Core Open or Trading Halt Auction and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO or his or her designee can temporarily suspend the prohibition on a DMM opening a security electronically if the Core Open or Trading Halt Auction Price will be more than the price or volume parameters specified in Rule 7.35A(c)(1)(G) and (H).[8]

Publishing Pre-Opening Indications

Rule 7.35A(d) requires the DMM to publish a pre-opening indication before a security opens or reopens if the Core Open or Trading Halt Auction Price is anticipated to be a change of more than the ''Applicable Price Range,'' as specified in Rule 7.35A(d)(3) from the

[4] Rule 7.12 sets forth when the Exchange would halt trading due to extraordinary trading volatility. Under Rule 7.12, a ''Level 1 Market Decline'' means a decline in the price of the S&P 500 Index of 7% from the closing price of that index, and a ''Level 2 Market Decline'' means a decline in the price of the S&P 500 Index of 13% from the closing price of that index. If there is a Level 1 or Level 2 Market Decline, the Exchange halts trading in all stocks for 15 minutes (a ''MWCB Halt'').

[5] The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[6] An order entered by a Floor broker is eligible to be included in the Floor Broker Participant for allocation purposes only if it is entered by a Floor broker while on the Trading Floor. *See* Rule 7.36(a)(5)(A).

[7] The following order types are available only to Floor brokers and would not participate when the Exchange is trading in a fully-electronic mode: Opening D Order (Rule 7.31(c)(1)(C)); Closing D Order (Rule 7.31(c)(2)(C)); D Order (Rule 7.31(d)(4)); Pegged Orders (Rule 7.31(h)); Yielding Modifier (Rule 7.31(i)(5)); and Crossing Orders (Rule 76).

[8] *See* Rule 7.35A(j)(1)(A). A temporary suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must inform Commission staff as promptly as practicable of the temporary suspension.

''Indication Reference Price,'' as specified in Rule 7.35A(d)(2). The standard Applicable Price Range is 5% for securities with an Indication Reference Price over $3.00 and $0.15 for securities with an Indication Reference Price equal to or lower than $3.00.

Under current rules, the Applicable Price Range is 10% for securities with an Indication Reference Price over $3.00 and $0.30 for securities with an Indication Reference Price equal to or lower than $3.00 under the following circumstances:

- If, as of 9:00 a.m., the E-mini S&P 500 Futures are +/−2% from the prior day's closing price of the E-mini S&P 500 Futures,
- when reopening trading following a MWCB Halt, or
- if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market.[9]

In addition, the requirement to publish a pre-opening indication prior to opening or reopening a security following a MWCB Halt can be temporarily suspended if the CEO of the Exchange or his or designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Core Open or Trading Halt Auction and that, absent relief, the operation of the Exchange is likely to be impaired.[10]

DMM-Facilitated Closing Auctions

Rule 7.35B(c)(1) sets forth the circumstances when a DMM may not effect a Closing Auction electronically. Relevant to this proposed rule change, a DMM cannot electronically effect a Closing Auction:

- If the Closing Auction Price will be more than a designated percentage away from the Exchange Last Sale Price (See Rule 7.35B(c)(1)(G)), as follows:

Exchange last sale price	Designated percentage
$25.00 and below	5
$25.01 to $50.00	4
Above $50.00	2

- If the paired volume for that Auction would be more than 1,000 round lots for such security (See Rule 7.35B(c)(1)(H)).

Under current rules, if the CEO of the Exchange or his or her designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Closing Auction and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange or his or her designee may temporarily suspend the prohibition on a DMM closing a security electronically if the Closing Auction Price would be more than the price or volume parameters specified in Rules 7.35B(c)(1)(G) and (H) of this Rule.[11]

Exchange-Facilitated Auctions

If a DMM cannot electronically facilitate an Auction for one or more securities in which the DMM is registered, the Exchange will conduct the Auction for such security or securities, as provided for in Rule 7.35C.[12] Before facilitating such an Exchange-facilitated auction, Rule 7.35C(d) requires the Exchange to provide the DMM with the opportunity to electronically facilitate an Auction.[13]

Unlike a DMM-facilitated Auction, an Exchange-facilitated Auction is subject to Auction Collars. The Auction Collar for the Core Open and the Closing Auction is based on a price that is greater than $0.15 or 10% away from the Auction Reference Price for the applicable Auction.[14] The Auction Collar for the Trading Halt Auction is based on a price that is the greater of $0.15 or 5% away from the Auction Reference Price for the Trading Halt Auction.[15] Market Orders and Limit Orders better-priced than the Auction Price and that were not executed in the Exchange-facilitated Auction will be cancelled.[16]

Before facilitating an Auction under Rule 7.35C, the Exchange will provide the DMM with the opportunity to electronically facilitate an Auction pursuant to Rules 7.35A or 7.35B.[17] If the Exchange facilitates an Auction, DMM Interest does not participate and any previously-entered DMM Interest will be cancelled.[18]

The Exchange has tested the above-described functionality under Rule 7.35C, most recently in an industry-wide test on March 7, 2020. Specifically, the Exchange tested a scenario where the Trading Floor was unavailable and DMMs electronically facilitated Auctions in their assigned securities electronically, and for any Auctions not facilitated electronically by the DMM, the Exchange facilitated the balance of the Auctions pursuant to Rule 7.35C. In addition, on March 19, 2020, two DMM firms implemented their own business continuity plans and removed staff from the Trading Floor. For Auctions on March 19 and March 20, 2020 in the securities assigned to those DMMs, consistent with Rule 7.35C, the Exchange provided the DMMs with the opportunity to electronically facilitate both the Core Open and Closing Auctions before an Exchange-facilitated auction under Rule 7.35C Auctions. For the 16 Core Open Auctions and 19 Closing Auctions that the Exchange facilitated on March 19, 2020, all interest was able to participate within the Auction Collars and no orders were cancelled after the Auctions.

[9] *See* Rule 7.35A(d)(3)(B).

[10] *See* Rule 7.35A(j)(1)(B). A suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must notify Commission staff as promptly as practicable of the temporary suspension.

[11] *See* Rule 7.35B(j)(1)(A). A suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must inform Commission staff as promptly as practicable of the temporary suspension. Rule 7.35B(j)(1)(A) and (B) cross references incorrect sub-paragraph numbers that do not correspond to the price and volume limitations applicable to Closing Auctions, which are described in Rules 7.35B(c)(1)(G) and (H), not Rules 7.35B(c)(1)(F) and (G).

[12] *See* Rule 7.35C(a). This functionality was introduced in 2015, and is designed to allow the Exchange to electronically open and close securities when a DMM is unable to do so because of business continuity disruptions, such as the physical closing of the Exchange Trading Floor or equipment or connectivity breakdowns. *See* Securities Exchange Act Release No. 76290 (October 28, 2015), 80 FR 67822, 67823 n.3 (November 3, 2015) (SR–NYSE–2015–49) (Notice of filing and immediate effectiveness of proposed rule change to specify that Exchange systems may open one or more securities electronically if a DMM cannot facilitate the opening of trading). *See also* Securities Exchange Act Release No. 74006 (January 6, 2015), 80 FR 1567, 1568 n.3 (January 12, 2015) (SR–NYSE–2014–74) (Notice of filing and immediate effectiveness of proposed rule change to specify that Exchange systems may close one or more securities electronically). *See also* Securities Exchange Act Release No. 85962 (May 29, 2015), 84 FR 26188, 26217 (June 5, 2019) (Approval Order of Pillar Auction Rules).

[13] As the Exchange does every day when the Trading Floor is open, the Exchange sends electronic messages in all securities to the DMMs to open, reopen, or close their assigned securities at scheduled times, *e.g.,* 9:30 a.m. for the Core Open Auction, and the DMM's algorithms can choose to respond to that message within a set time period and electronically-facilitate an Auction by selecting the Auction Price and submitting DMM Auction Liquidity, as defined in Rule 7.35(a)(8)(A). When the Trading Floor is open, if a DMM's algorithm chooses not to respond, the DMM on the Trading Floor will proceed to facilitate the Auction manually. When the Trading Floor is closed, the Exchange will continue to send such electronic messages in all securities to the DMMs to electronically open, reopen, or close their assigned securities at the same scheduled times. If the DMMs do not electronically-facilitate an Auction within a set time period, because the DMM cannot facilitate the Auction manually when the Trading Floor is closed, the Exchange will facilitate such Auction.

[14] *See* Rule 7.35C(b)(3)(A)(i).

[15] *See* Rule 7.35C(b)(3)(A)(ii).

[16] *See* Rule 7.35C(g)(1).

[17] *See* Rule 7.35C(d). As provided for in Rule 7.35A(c)(1)(E), a DMM cannot electronically facilitate a Trading Halt Auction if it is a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual. Accordingly, in such case, the Exchange would not provide the DMM with the opportunity to reopen electronically, and will facilitate such reopening pursuant to Rule 7.35C.

[18] *See* Rule 7.35C(a)(1).

Proposed Rule Change

The Exchange proposes temporary changes to Rules 7.35A, 7.35B, and 7.35C related to DMM electronically-facilitated Auctions beginning March 23, 2020 and ending on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.[19]

For the Core Open and Trading Halt Auction, the Exchange proposes to suspend:

- The percentage price parameters in Rule 7.35A(c)(1)(G) and (c)(2) and not allow a DMM to effect a Core Open or Trading Halt Auction electronically if the Core Open or Trading Halt Auction Price would be more than 10% away from the Consolidated Last Sale Price; [20]
- The volume parameters in Rule 7.35A(c)(1)(H); [21]
- The requirement to publish a pre-opening indication pursuant to Rule 7.35A(d) either before a Core Open or Trading Halt Auction.[22]

For the Closing Auction, the Exchange proposes to suspend:

- The percentage price parameters in Rule 7.35B(c)(1)(G) and not allow a DMM to effect a Closing Auction electronically if the Closing Auction Price would be more than 10% away from the Exchange Last Sale Price.[23]
- The volume requirements in Rule 7.35B(c)(1)(H).[24]

The Exchange believes that these proposed measures are consistent with our current rules, as described above. Pursuant to either Rule 7.35A(j)(1) or 7.35B(j)(1), the CEO of the Exchange or his or her designee can determine to take one or more of the above actions for the trading day on which it is declared. The Exchange believes that closing the Trading Floor, combined with the current high volatility in the markets, would otherwise warrant invoking such temporary relief. Specifically, the Exchange believes that by eliminating volume restrictions and widening the percentage parameters for all Auctions to 10% during the this temporary period when the Trading Floor is closed, DMMs would be able to facilitate more Auctions electronically and enter their own interest to participate in such Auctions, reducing the need for the Exchange to facilitate Auctions, which would not include DMM interest. Similarly, because it will not be feasible for DMMs to publish pre-opening indications, which is a Floor-based manual action, during this temporary period when the Trading Floor is closed, the Exchange believes it would promote clarity and transparency in Exchange rules to specify that the requirement to publish such indications would be suspended.

The Exchange believes that it would promote clarity and transparency for DMMs, the Commission and the public to specify in Commentary to both Rule 7.35A and 7.35B the price and volume parameters that would be applicable to when a DMM could facilitate an Auction electronically during this temporary period of time.

In addition to amending Rules 7.35A and 7.35B, the Exchange proposes to amend Rule 7.35C to provide that, the Auction Collar for a Trading Halt Auction following either a Level 1 or Level 2 MWCB Halt would be the greater of $0.15 or 10% away from the Auction Reference Price.[25] The Exchange recently filed a separate proposed rule change to widen, until May 15, 2020, the Auction Collars for such Exchange-facilitated Auctions in the same manner if a security was not reopened by a DMM following a MWCB Halt by 3:30 p.m.[26] With the Trading Floor closed, the Exchange could potentially facilitate a Trading Halt Auction following a MWCB Halt before 3:30 p.m. Therefore, the Exchange proposes to extend the widened Auction Collars to any Exchange-facilitated MWCB Halt reopenings, regardless of time of day.

The Exchange also proposes to amend current Commentary .01, which was added in the MWCB Reopen Filing, and renumber it Commentary .02. Because the relief described in the MWCB Reopen Filing is moot during the temporary period when the Trading Floor is closed, the Exchange proposes to amend when that Commentary would be applicable to provide that it would be in effect if the Trading Floor facilities reopen through trading on May 15, 2020. The Exchange also proposes non-substantive amendments to this Commentary to move a defined term to proposed Commentary .01(a) to Rule 7.35C.

Finally, the Exchange also proposes a non-substantive amendment to correct rule cross references in Rule 7.35B(j)(1)(A) and (B), which currently cross reference Rules 7.35B(c)(1)(F) and (G). As noted above, these rule cross references should be Rules 7.35B(c)(1)(G) and (H), which correspond to the price and volume parameters applicable to Closing Auctions.

As noted above, the Exchange has previously tested Exchange-facilitated Auctions when the Trading Floor is closed, and has implemented them in production beginning on March 19, 2020. The Exchange proposes to test the changes described above in an industry test scheduled for Saturday, March 21, 2020, before the Trading Floor closes on March 23, 2020.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

As a result of uncertainty related to the ongoing spread of COVID–19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID–19. Directly related to such social-distancing measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market

[19] If the Trading Floor remains closed past May 15, 2020, the Exchange will file a separate proposed rule change to extend the relief.

[20] *See* proposed Commentary .01(a) to Rule 7.35A. During this period, the Exchange could still determine to invoke temporary relief under Rule 7.35A(j)(1) to further widen the percentage parameters for a trading day for which the relief is declared.

[21] *See* proposed Commentary .01(b) to Rule 7.35A.

[22] *See* proposed Commentary .01(c) to Rule 7.35A.

[23] *See* proposed Commentary .01(a) to Rule 7.35B. During this period, the Exchange could still determine to invoke temporary relief under Rule 7.35B(j)(1) to further widen the percentage parameters for a trading day for which the relief is declared.

[24] *See* proposed Commentary .01(b) to Rule 7.35B.

[25] *See* proposed Commentary .01(a) to Rule 7.35C

[26] *See* Securities Exchange Act Release No. 88413 (March 18, 2020) (SR–NYSE–2020–19) (Notice of filing and immediate effectiveness of proposed rule change) (''MWCB Reopen Filing'').

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

and a national market system because it would promote fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically. Since March 9, 2020, the Exchange has been implementing the proposed relief under current Rules on a day-by-day basis. Accordingly, the Exchange believes that the changes that would be described in the proposed Commentary to Rules 7.35A and 7.35B are consistent with our current rules.

The Exchange believes that by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, DMMs will have more certainty regarding what limitations would be applicable during this period when they are unable to manually facilitate Auctions. Because they would no longer need to respond to relief that is invoked on a same-day basis, DMMs would be able to better manage their Auction processes, which the Exchange believes would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19 virus.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [29] and Rule 19b–4(f)(6) thereunder.[30] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32]

A proposed rule change filed under Rule 19b–4(f)(6) [33] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that the proposed rule change is designed to ensure fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19 virus. The Exchange also believes that the proposed changes are consistent with the type of relief that the Exchange can invoke on a temporary basis pursuant to Rules 7.35A(j)(1) and 7.35B(j)(2). According to the Exchange, the relief being requested has already been implemented on a day-by-day basis to respond to the ongoing market volatility that the markets have experienced since March 9, 2020, meaning that the proposed relief is consistent with relief already available under Exchange rules. In the Exchange's view, implementing the proposed rule change would eliminate the need to invoke these measures on a daily basis, and would provide advance notice and greater certainty to DMMs regarding what parameters would be applicable to whether they can facilitate an Auction electronically during the temporary period when the Trading Floor is closed. The Exchange states that it is able to implement these proposed rule changes immediately, that it will have tested such measures on March 21, 2020, and that waiver of the 30-day operative delay would provide the DMMs with greater ability to facilitate Auctions electronically during the temporary period when the Trading Floor is closed. The Commission notes that since March 9, 2020, the Exchange has been implementing the proposed relief under current Exchange rules on a day-by-day basis. The Commission also notes that by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, DMMs will have more certainty regarding what limitations would be applicable during this period when they are unable to manually facilitate Auctions, and thus should able to better manage their Auction processes. Finally, The Commission notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 17 CFR 240.19b–4(f)(6).

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement for this proposed rule change.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–22 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–22, and should be submitted on or before April 16, 2020.[36]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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[36] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88460; File No. SR–Phlx–2020–10]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Option Contracts

March 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 4A, Section 12, Terms of Option Contracts.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4A, Section 12, Terms of Option Contracts. Specifically, the Exchange proposes to amend Options 4A, Section 12(b) and (b)(2) to change the number of expirations that the Exchange may open for trading in series of options related to Long-Term Options Series of index options. The Exchange also proposes to change the title of Options 4A, Section 12 from ''Terms of Option Contracts'' to ''Terms of Index Options Contracts.''

Long-Term Options Series

The current rule text provides within Phlx Options 4A, Section 12(b):

> After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than nine and up to 60 months to expiration (long-term options series) as provided in subparagraph (b)(2). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

The Exchange proposes to also amend the current text of Phlx Options 4A, Section 12(b)(2) which states the below with respect to Long-term [3] Option Series:

> The Exchange may list, with respect to any class of stock index options, series of options having not less than nine and up to 60 months to expiration, adding up to ten expiration months. Such series of options may be opened for trading simultaneously with series of options trading pursuant to this rule. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.

Similar, in part, to Cboe Exchange, Inc. (''Cboe'') Rule 4.13(b),[4] the Exchange proposes to amend the current rule text to provide ''the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than twelve and up to 60 months to expiration (long-term options series) within Options 4A, Section 12(b) and, similarly, within Options 4A, Section 12(b)(2) amend the language to provide, ''[t]he Exchange may list, with respect to any class of stock index options, series of options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to amend this title to capitalize ''Term.''

[4] Cboe Rule 4.13(b) provide for Long-Term Index Option Series, ''Notwithstanding the provisions of subparagraph (a)(2) above, the Exchange may list long-term index option series that expire from 12 to 180 months from the date of issuance.''

having not less than twelve and up to 60 months to expiration . . .''. This would change Phlx's current expiration for index options from those series not having less than nine and up to 60 months to expirations to a number of expirations not having less than twelve and up to 60 months to expiration with respect to Long-Term Options Series. The Exchange is aligning its Rules, in part, to match those of Cboe with respect to the lower monthly limit of acceptable months for Long-Term Option Series in index options.

In addition, the Exchange proposes to internally harmonize its Rules with respect to Long-Term Options Series. In 2013, Phlx amended Rule 1101(A), currently Options 4A, Section 12, to make its rule consistent with Cboe's rule.[5] The 2013 Rule Change amended the Phlx rule text at then Rule 1101A(b)(iii) from a maximum term of up to 60 months to expiration to an established minimum term of not less than nine months to expiration for long-term options series. The 2013 Rule Change established a floor for long-term options series which was not identical to CBOE Rule 24.9; Cboe's minimum floor was twelve months while Phlx established the floor at nine months. The Exchange noted in that filing that the intent of the 2013 Rule Change was to harmonize the Exchange's rules internally with Phlx Rule 1012,[6] which is currently Phlx Options 4, Section 5, (regarding long-term equity and exchange traded fund options) as well as with the rules of another options exchange, namely CBOE. The 2013 Rule Change stated, ''The Exchange believes this would eliminate potential confusion about competitive long term-index options listing opportunities on the Exchange, would allow better hedging and trading opportunities and efficiency, and would be beneficial to the Exchange and its traders, market participants, and public investors in general.'' [7]

Subsequent to the 2013 Rule Change, Phlx amended then Rule 1012(a)(i)(D) [8] to change the expiration timeframe to twelve to thirty-nine months until expiration stating that this change was consistent with the proposed rule change filings which adopted it.[9] The Rule 1012 Rule Change resulted in current Phlx Options 4, Section 5(a)(i)(D) Long-Term Option Series having an expiration timeframe of twelve to thirty-nine months while the 2013 Rule Change resulted in current Phlx Options 4A, Section 12 having an expiration of nine to 60 months. At this time, the Exchange proposes to harmonize Phlx Options 4, Section 12 to Phlx Option 4, Section 5(a)(i)(D) and also mirror the lower monthly limit within Cboe's Rule 4.13(b).

Rulebook Correction

In addition, the Exchange proposes to correct rule text which was not correctly copied into the Phlx Rulebook from a prior rule change.[10] Specifically, the Prior Rule Change adopted a new section (a)(2) which was not properly copied into the Rulebook before it was relocated into the new Rulebook as part of the Phlx Rulebook Relocation Rule Change.[11] The rule text, as adopted, stated, ''The Exchange shall determine fixed point intervals of exercise prices for index options (options on indexes). Generally, except as provided in Commentary .04 below, the exercise (strike) price intervals will be no less than $5, provided that the Exchange may determine to list strike prices at no less than $2.50 intervals for options on the following indexes (which may also be known as sector indexes):''. At this time, the Exchange proposes to restore the correct rule text into Phlx Options 4A, Section 12(a)(2) and amend the term ''Commentary'' to reflect the new term ''Supplementary Material'' as stated within the Phlx Rulebook Relocation Rule Change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending its rules, in part, to align them to Cboe's Rule,[14] as well Phlx Rules at Options 4, Section 12(a)(i)(D) with respect to Long-Term Option Series in index options. Harmonizing Phlx's index options and equity and ETF options rules, with respect to Long-Term Option Series in index options, will allow Phlx to list these options in the same manner. The Exchange notes that this rule change will allow Phlx to list more non-Long-Term Option Series expirations as the front-months for Long-Term Options expirations would begin with month twelve instead of month nine. The Exchange believes that there is greater customer demand for a greater number of non-Long-Term Option Series expirations.

The remainder of the Rulebook changes are intended to restore the proper rule text from a prior rule change [15] into the Rulebook and other non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal will impose any burden on intra-market competition as all market participants will be treated in the same manner with respect to expirations of Long-Term Options Series in index options. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition as market participants are welcome to become Phlx Members and trade at Phlx if they determine that this proposed rule change has made Phlx more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading their own broad-

[5] *See* Securities Exchange Act Release No. 69031 (March 4, 2013), 78 FR 15073 (March 8, 2013) (SR–Phlx–2013–18) (''2013 Rule Change''). The 2013 Rule Change stated that, ''The purpose of the proposed rule change is to amend subsection (b) of Rule 1101A to clarify that long-term options series must have a term of not less than nine months to expiration, and to reflect that certain rules will not apply to such long-term options series until the time to expiration is less than nine months. These changes are proposed to the limited extent needed to make subsection (b) regarding long-term options series consistent with the established rule language of Chicago Board Options Exchange, Inc. (''CBOE'') (*e.g.,* CBOE Rule 24.9 regarding LEAPS), as well as with the established rule language of the Exchange (*e.g.,* Rule 1012 regarding long-term equity and exchange traded fund (''ETF'') options).''

[6] Phlx Rule 1012(a)(i)(D) contained language that was being harmonized. The Exchange noted that intervals, differentials, and continuity rules are equally not germane to long-term index options as to long-term equity and ETF options. That is, index options are no different from equity and ETF options in respect of the non-applicability of these three items until expiration time is less that nine months, and should, therefore, have similar rules. Phlx Rule 1012 was since relocated to current Options 4A, Section 5.

[7] *Id.*

[8] See Securities Exchange Act Release No. 80769 (June 1, 2017), 82 FR 25472 (May 25, 2017) (SR–Phlx–2017–41) (''Rule 1012 Rule Change'').

[9] See Securities Exchange Act Release Nos. 28910 (February 22, 1991), 56 FR 9032 (March 4, 1991) (SR–Phlx–90–38) (adopting Rule 1012 Commentary .03), and 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (SR–Phlx–91–18). The provision was subsequently relocated to subsection (a)(i)(D) of Rule 1012. See Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR–Phlx–2011–04).

[10] *See* Securities Exchange Act Release No. 85210 (February 27, 2019), 84 FR 7958 (March 5, 2019) (SR–Phlx–2019–02) (''Prior Rule Change'').

[11] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (''Phlx Rulebook Relocation Rule Change'').

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Cboe Rule 4.13(b).

[15] *See* note 10 above.

based index options with similar expirations. This proposal will harmonize Phlx's index options and equity and ETF options rules, with respect to Long-Term Option Series in index options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As the proposed rule change raises no novel issues and allows Phlx, with respect to Long-Term Option Series in index options, to harmonize its index options and equity and ETF options rules, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[20]

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–10, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06390 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88439; File No. SR–LTSE–2020–06]

Self-Regulatory Organizations; Long-Term Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading of Exchange Traded Products on an Unlisted Trading Privileges Basis

March 20, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 11, 2020, Long-Term Stock Exchange (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes a rule change to adopt rules relating to the trading of Exchange Traded Products (''ETPs'') on an unlisted trading privileges (''UTP'') basis.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules to allow for trading securities on a UTP basis. The Exchange proposes to adopt LTSE Rule 14.350, which would address securities traded pursuant to UTP and would set standards for certain equity derivative securities that are identical to the rules of other equity exchanges,[4] but for changes to the terminology used by the Exchange (*i.e.,* ''Member'' instead of ''ETP Holder'') and the placement of two definitions directly within the rule (*i.e.,* the definitions of ''Exchange Traded Product'' and ''UTP Exchange Traded Product'' in proposed Rule 14.350(b)).

Proposed Rule 14.350(a) would allow the Exchange to extend UTP to any security that is an NMS Stock (as defined in Rule 600 under Regulation NMS) that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act.[5] Any such security to which UTP is extended would be subject to all of the Exchange's rules applicable to trading on the Exchange, unless otherwise noted.

Proposed Rule 14.350(b) would adopt a definition of ''Exchange Traded Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Exchange Act. The proposed rule also would adopt a definition of ''UTP Exchange Traded Product'' to mean one of the following Exchange Traded Products that trades on the Exchange pursuant to unlisted trading privileges: Equity Linked Notes, Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.[6]

Any UTP Security[7] that is a UTP Exchange Traded Product would be subject to the additional requirements set forth in the proposed subsections of Rule 14.350(b).

Specifically, proposed Rule 14.350(b)(1) would provide that the Exchange distribute an information circular prior to the commencement of trading in each UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange, including (a) the special risks of trading the new Exchange Traded Product, (b) the Exchange's rules that apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

Proposed Rule 14.350(b)(2)(A) would set forth requirements regarding prospectus delivery requirements. Members would be subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Exchange Traded Product is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940[8] and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

Proposed Rule 14.350(b)(2)(B) would require the Exchange to inform Members of the application of the provisions of this subparagraph to UTP Exchange Traded Products by means of an information circular. It also would require the Exchange to require that a Member of the Exchange provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such securities is delivered to the purchaser. In addition, a Member would need to include a written description of the terms and characteristics of these securities with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle would need to include a statement substantially in the following form: ''A circular describing the terms and characteristics of [the UTP Exchange Traded Products] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Exchange Traded Products].'' A Member carrying an omnibus account for a non-Member would be required to inform such non-Member that execution of an order to purchase UTP Exchange Traded Products for such omnibus account would be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms that are directly applicable to the Member under this proposed rule.

Proposed Rule 14.350(b)(2)(C) would provide that, upon request of a customer, a Member would need to provide to the customer a prospectus for the particular UTP Exchange Traded Product.

Proposed Rule 14.350(b)(3) would govern trading halts and would provide that the Exchange would halt trading in a UTP Exchange Traded Product as provided for in Exchange Rule 11.271. Nothing in proposed Rule 14.350(b)(3) would be intended to limit the power of the Exchange under its rules or procedures with respect to its ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

Proposed Rule 14.350(b)(4) would set forth restrictions on Members acting as Market Makers on the Exchange in a UTP Exchange Traded Product that derives its value from one or more

[4] *See* NYSE National Rule 5.1; *see also* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02) (approving NYSE National Rule 5.1).

[5] 15 U.S.C. 78l(f). *See also* 17 CFR 242.600.

[6] The terms ''Exchange Traded Product'' and ''UTP Exchange Traded Product'' are identical to those terms as they are used in NYSE National Rule 5.1 and defined in NYSE National Rule 1.1(m). *See supra* text accompanying note 4.

[7] ''UTP Security'' is defined as ''any security that is not listed on the Exchange, but is traded on the Exchange pursuant to unlisted trading privileges.'' LTSE Rule 1.160(vv).

[8] 15 U.S.C. 80a–24.

currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, ''Reference Assets'').

First, under proposed Rule 14.350(b)(A), Market Makers would need to file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives (collectively with Reference Assets, ''Related Instruments''), which the Member acting as a registered Market Maker on the Exchange may have or over which it may exercise investment discretion. No Market Maker would be permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a Member acting as a registered Market Maker on the Exchange, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by proposed Rule 14.350.

Second, under proposed Rule 14.350(b)(B), a Market Maker on the Exchange would, in a manner prescribed by the Exchange, be required to file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (i) In which the Market Maker holds an interest; (ii) over which it has investment discretion; or (iii) in which it shares in the profits and/or losses. A Market Maker on the Exchange would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by proposed Rule 14.350.

Third, under proposed Rule 14.350(b)(C), in addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker on the Exchange would be required to, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker on the Exchange for which Related Instruments are traded.

Fourth, under proposed Rule 14.350(b)(D), a Market Maker on the Exchange would not be allowed to use any material nonpublic information in connection with trading a Related Instrument.

Finally, proposed Rule 14.350(b)(5) would provide that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that proposed Rule 14.350 would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest by providing for the trading of securities, including UTP Exchange Traded Products, on the Exchange pursuant to UTP, subject to consistent and reasonable standards. Accordingly, the proposed rule change would contribute to the protection of investors and the public interest because it may provide a better trading environment for investors and, generally, encourage greater competition between markets.

The proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting rules that will ultimately lead to the trading pursuant to UTP of the proposed products on the Exchange, just as they are currently traded on other exchanges. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges.[11] The Exchange believes that by conforming its rules and allowing trading opportunities on the Exchange that are already allowed by rule on another market, the proposed rule change would offer another venue for trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange also believes that individuals and entities that are allowed to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

The Exchange believes that proposed Rule 14.350, which would enumerate the categories of UTP Exchange Traded Products that the Exchange proposes to trade and would specify additional requirements relating to UTP Exchange Traded Products, would ensure the maintenance of a fair and orderly market and provide for mechanisms for the regulatory oversight of securities trading on a UTP basis on the Exchange, in compliance with Rule 12f–5 under the Act.[12]

The Exchange also believes that the proposed rule change supports the principles of Section 11A(a)(1) of the Act[13] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers, and among exchange markets. The proposed rule change also supports the principles of Section 12(f) of the Act, which govern the trading of securities pursuant to a grant of unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

By providing for the trading of securities on the Exchange on a UTP basis, the Exchange believes its proposal will lead to the addition of liquidity to the broader market for these securities and to increased competition among the existing group of liquidity providers. The Exchange also believes that, by so doing, the proposed rule change would encourage the additional utilization of, and interaction with, the exchange market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes, and greater price improvement for securities traded pursuant to UTP.

The Exchange further believes that enhancing liquidity by trading securities

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 4.

[12] 17 CFR 240.12f–5.

[13] 15 U.S.C. 78k–1(a)(1).

on a UTP basis would help raise investors' confidence in the fairness of the market, generally, and their transactions, in particular. As such, the general UTP trading rule would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in securities on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

LTSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2020–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LTSE–2020–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LTSE–2020–06 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06301 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88446; File No. SR–CboeEDGA–2020–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule (''Compliance Rule'') Regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''), To Be Consistent With Certain Proposed Amendments To and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

March 20, 2020.

On January 22, 2020, Cboe EDGA Exchange, Inc. (''EDGA'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88102 (January 30, 2020), 85 FR 6659.

[4] 15 U.S.C. 78s(b)(2).

proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates May 5, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGA–2020–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06289 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88435; File No. SR–MRX–2020–06]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Complex Orders

March 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to permit the Exchange to determine the availability of order types and time-in-force provisions and to add other existing order types to the list of single-leg and Complex Order types.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[3]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to: (1) Provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis; and (2) to add other existing order types to the list of single-leg and Complex Order types.

The Exchange proposes to add a sentence to Options 3, Section 14, Complex Orders, which states, ''The Exchange may determine to make certain order types and/or times-in-force available on a class or System basis.'' This sentence exists today within Nasdaq ISE, LLC (''ISE'') Options 3, Section 7, ''Types of Orders.'' [4] This proposed change is based on the rules of ISE Options 3, Section 7 and the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[5] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1(d),[6] Cboe Exchange, Inc. (''Cboe'') Rule 5.6(a) [7] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[8]

The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1(d) and (f), EDGX Options Rules 21.1(d) and (f), Cboe Rule 5.6(a) and C2 Rule 6.10(a), each of which provides these exchanges with substantially the same flexibility. This rule text is also consistent with ISE Rules at Options 3, Section 7.

This rule change will not permit the Exchange to discriminate among market

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] *See* Securities Exchange Act Release No. 88294 (February 26, 2020), 85 FR 12629 (March 3, 2020) (SR–ISE–2020–07).

[5] BZX Options Rule 21.1(d), Definitions, provides ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.'' BZX Options Rule 21.1(f), Definitions, provides ''The term 'Time in Force' shall mean the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (l) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis.''

[6] EDGX Options Rule 21.1(d), Definitions, provides, ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.'' EDGX Options Rule 21.1(f), Definitions, provides, ''The term 'Time in Force' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[7] Cboe Rule 5.6, Order Types, Order Instructions, and Times-in-Force at subsection (a), Availability, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis.''

[8] C2 Rule 6.10, Availability of Orders, at subsection (a) provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

The Exchange also proposes to add to Options 3, Section 7 at proposed (v)–(y) and Options 3, Section 14(b) at proposed (16), (17) and (18), references to various existing order types that may be entered into various auction mechanisms on MRX. Specifically, the Exchange proposes to add a reference to both single-leg and Complex Orders entered into the Price Improvement Mechanism, Facilitation Mechanism and Solicited Order Mechanism. These order types exist today within the MRX Rules, however, unlike other order types, they are not mentioned within Options 3, Sections 7 or 14, which list the single-leg and Complex Orders, respectively, available for trading on MRX. Further, the Exchange also proposes to add the Block Order type to Options 3, Section 7 to complete the list of available order types that may be entered into an auction mechanism. The Exchange proposes to add the following rule text into Options 3, Section 7:

(v) Block Order. A Block Order is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a).

(w) Facilitation Order. A Facilitation Order is an order entered into the Facilitation Mechanism as described in Options 3, Section 11(b).

(x) SOM Order. A SOM Order is an order entered into the Solicited Order Mechanism as described in Options 3, Section 11(d).

(y) A PIM Order. A PIM Order is an order entered into the Price Improvement Mechanism as described in Options 3, Section 13(a).

The Exchange proposes to add the following rule text into Options 3, Section 14:

(16) Complex Facilitation Order. A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c).

(17) Complex SOM Order. A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e).

(18) Complex PIM Order. A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e).

The Exchange believes the addition of this rule text will make clear that these order types are available.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[11]

The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

This provision was added to all 6 Nasdaq affiliated markets for the simple markets[12] and therefore will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with substantially the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2 as well as ISE.[13] The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple Nasdaq affiliated exchanges and promotes a fair and orderly national options market system. This proposal does not present any novel or unique issues because other exchanges have substantially similar rules.[14]

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The proposal to add a reference to all existing order types that may be entered into auctions into Options 3, Sections 7 and 14 is consistent with the Act. The Exchange believes the addition of the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the addition of the Complex Facilitation Order type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14 will make clear to market participants the various types of single-leg order and Complex Orders that may be transacted on MRX. The descriptions of these order types merely point at the existing mechanisms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

[12] *See* Nasdaq Phlx LLC, The Nasdaq Options Market, LLC, Nasdaq BX, Inc., ISE, Nasdaq GEMX, LLC and MRX Rules at Options 3, Section 7.

[13] *See* notes 4–8 above.

[14] *Id.*

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[15] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

The proposal to add the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the Complex Facilitation type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14b does not impose an undue burden on competition. The addition of these order types would complete the list of single-leg and Complex Order types, which are available to all market participants, and are merely being referenced within the order type rules for greater transparency.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately The Exchange believes that the proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis, allowing the Exchange to address the specific characteristics of different classes and different market conditions. According to the Exchange, this would ensure that the appropriate order types and times-in-force are tailored to the different class characteristics and mitigate risks associated with changing market conditions. The Exchange also believes that referencing all single-leg and Complex Order types makes clear which order types are available to all market participants. Moreover, the Exchange represents that the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants, and provides the Exchange with substantially the same flexibility as the rules of other exchanges. Lastly, the Exchange argues that waiver of the 30-day operative delay will permit the Exchange to immediately use this ability to make certain order types available and unavailable, as well as enable the Exchange to remain competitive as markets and market conditions evolve. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2020–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2020–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

[15] *Id.*

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2020–06, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06297 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0010]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections, and one new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0010].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 26, 2020. Individuals can obtain copies of the collection instrument by writing to the above email address.

Notice to Electronic Information Exchange Partners To Provide Contractor List—0960–NEW. The Federal standards Privacy Act of 1974; E-Government Act of 2002; and the National Institute of Standard Special Publications 800–53–4, require SSA to maintain oversight of the information it provides to Electronic Information Exchange Partners (EIEPs). EIEPs obtain SSA data for the administration of federally funded and state-administered programs. SSA has a responsibility to monitor and protect the personally identifiable information SSA shares with other Federal and State agencies, and private organizations through the Computer Matching and Privacy Protection Act, and the Information Exchange Agreements (IEA). Under the terms of the State Transmission Component IEA, and agency IEA, EIEPs agree to comply with Electronic Information Exchange security requirements and procedures for State and local Agencies exchanging electronic information with SSA. SSA's Technical Systems Security Requirements document provides all agencies using SSA data ensure SSA information is not processed; maintained; transmitted; or stored in electronic devices; computers; or computer networks located in geographic or virtual areas not subject to U.S. law, or stored by means of a data communications channel. SSA conducts tri-annual compliance reviews of all State and local agencies, and Tribes with whom we have an IEA, to verify appropriate security safeguards remain in place to protect the confidentiality of information SSA supplies. SSA requires any organization with an electronic data exchange agreement, to provide the SSA Regional Office contact a current list of contractors, or agents, who have access to SSA data upon request. SSA uses Form SSA–731, Notice to Electronic Information Exchange Partners to Provide Contractor List to collect this. The respondents are Federal agencies, and state, local, or tribal agencies, who exchange electronic information with SSA.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–731	300	1	20	100	$18.00 *	$1,800 **

* We based this figure on average State, local and tribal government worker's salaries, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 27, 2020. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Continuing Disability Review Report—20 CFR 404.1589 & 416.989—0960–0072. Sections 221(i), 1614(a)(3)(H)(ii)(I) and 1633(c)(1) of the Social Security Act (Act) require SSA to periodically review the cases of individuals who receive benefits under Title II or Title XVI, based on disability, to determine if disability continues. SSA uses Form SSA–454, Continuing Disability Review Report to complete the review for continued disability. SSA

[23] 17 CFR 200.30–3(a)(12), (59).

considers adults eligible for payment if they continue to be unable to do substantial gainful activity because of their impairments; and we consider Title XVI children eligible for payment if they have marked and severe functional limitations due to their impairments. SSA also uses Form SSA–454 to obtain information on sources of medical treatment; participation in vocational rehabilitation programs (if any); attempts to work (if any); and the opinions of individuals regarding whether their conditions have improved. The respondents are Title II or Title XVI disability recipients or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
SSA–454–BK (Paper version)	270,500	1	60	270,500	* $10.22	** $2,764,510	*** 24	** $245
Electronic Disability Collect System (EDCS)	270,500	1	60	270,500	* 10.22	** 2,764,510	*** 24	** 245
Totals	541,000			541,000		** 5,529,020		** 490

* We based this figure on average DI payments, as reported in SSA's disability insurance payment data.
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*
*** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

2. Employer Reports of Special Wage Payments—20 CFR 404.428–404.429—0960–0565. SSA collects information on the SSA–131 to prevent earnings-related overpayments, and to avoid erroneous withholding of benefits. SSA field offices and program service centers also use Form SSA–131 for awards and post-entitlement events requiring special wage payment verification from employers. While we need this information to ensure the correct payment of benefits, we do not require employers to respond. The respondents are large and small businesses that make special wage payments to retirees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **	Average wait time in field office (minutes) ***	Total annual opportunity cost for wait time (dollars) **
Paper Version: SSA–131 (without #6)	105,000	1	20	35,000	* $36.65	** $1,282,750	*** 24	** $880
Paper Version: SSA–131 (#6 only)	1,050	1	2	35	* 36.65	** 1,283	*** 24	** 880
Electronic Version: Business Services Online Special Wage Payments	26	1	5	2	* 36.65	** 73	0	0
Totals	106,076			35,037		** 1,284,106		** 1,760

* We based this figure on average Budget Analysts hourly salary, as reported by Bureau of Labor Statistics data.
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*
*** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

Dated: March 20, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–06277 Filed 3–25–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11083]

Notice of Cancellation of Public Meeting for International Maritime Organization Facilitation Committee

Due to concerns surrounding the spread of COVID–19, the Department of State is cancelling its meeting in preparation for the International Maritime Organization's (IMO) Facilitation Committee previously scheduled on April 6, 2019. The IMO has indefinitely postponed the subject meeting. If another meeting is scheduled, the Department of State will issue a **Federal Register** Notice with details.

Jeremy M. Greenwood,

Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2020–06338 Filed 3–25–20; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 11082]

U.S. Department of State Advisory Committee on Private International Law: Notice of Cancellation of Meeting

Due to concerns surrounding the spread of COVID–19, the Department of State's Advisory Committee on Private International Law (ACPIL) is cancelling its meeting previously scheduled meeting on Friday, April 17, 2020 in Washington, DC. This meeting will be re-scheduled at a later date. The Department of State will issue a **Federal Register** Notice with details.

For additional information, contact Sharla Draemel (*draemels@state.gov*) or Tricia Smeltzer (*smeltzertk@state.gov*).

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2020–06337 Filed 3–25–20; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 11077]

30-Day Notice of Proposed Information Collection: PEPFAR Program Expenditures

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection

described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to April 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irum Zaidi, 1800 G St. NW, Suite 10300, SA–22, Washington, DC 20006, who may be reached on 202–663–2588 or at *ZaidiIF@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* PEPFAR Program Expenditures.
- *OMB Control Number:* 1405–0208.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Office of the U.S. Global AIDS Coordinator and Health Diplomacy (S/GAC).
- *Form Number:* DS–4213.
- *Respondents:* Recipients of U.S. government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 1,100.
- *Estimated Number of Responses:* 1,100.
- *Average Time per Response:* 16 hours.
- *Total Estimated Burden Time:* 17,600 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293) (HIV/AIDS Leadership Act), as amended and reauthorized for a third time by the PEPFAR Extension Act of 2018 (Pub. L. 115–305) to support the global response to HIV/AIDS. In order to improve program monitoring, PEPFAR added reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data are collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic web-based interface into which users upload data. This expenditures data is analyzed by partner for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, accuracy in defining program targets, and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

Methodology

Data will continue to be collected in a web-based interface available to all partners receiving funds under PEPFAR. After implementing Expenditure Reporting since 2012, we learned that implementing partners (IPs) prefer the Microsoft Excel template (DS–4213) data collection process. The requirements in the Excel template have been reduced with IP input to only request critical information. By being able to download a template, prime IPs responsible to complete the submission are more effectively able to collaborate quickly with other key personnel and coordinate with their subrecipients to enter the data for the full amount of PEPFAR funding expended during the prior fiscal year. This approach also proves helpful where internet connectivity is not strong. After completing the Excel template, IPs upload the data to an automated system that further checks the data entered for quality and completeness. Automated checks reduce the time needed by IPs to complete the data cleaning process. Aggregate data is available in a central system for analysis.

Brendan Garvin,

Director of Management & Budget.

[FR Doc. 2020–06336 Filed 3–25–20; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 279 (Sub–No. 7X)]

Canadian National Railway Company—Discontinuance of Trackage Rights Exemption—in St. Lawrence and Franklin Counties, N.Y.

Canadian National Railway Company (CNR), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue approximately 22.3 miles of limited local and overhead trackage rights on a line of railroad owned by CSX Transportation, Inc. (CSXT), extending from milepost 160.8 in Massena, N.Y., to milepost 183.1 at the U.S.-Canadian border near Fort Covington, N.Y., in St. Lawrence and Franklin Counties, N.Y. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 12937, 12914, 13613, and 13662.

CNR has certified that: (1) No local traffic has moved over the Line for at least two years via CNR's trackage rights; (2) any overhead traffic handled by CNR on the Line could be rerouted over other lines; (3) no formal complaint filed by a user of CNR rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service on the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within

[1] The Line is among those lines currently proposed to be acquired by an affiliate of CNR. *See Bessemer & Lake Erie R.R.—Acquis. & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, St. Lawrence & Franklin Ctys., N.Y.,* Docket No. FD 36347. CNR certifies that it has served its verified notice on all parties of record in that acquisition proceeding.

the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [2] to subsidize continued rail service has been received, this exemption will be effective on April 25, 2020, unless stayed pending reconsideration.[3] Petitions to stay that do not involve environmental issues must be filed by April 3, 2020, and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [4] must be filed by April 6, 2020.[5] Petitions to reopen must be filed by April 15, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. A copy of any petition filed with the Board should be sent to CNR's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: March 23, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–06349 Filed 3–25–20; 8:45 am]

BILLING CODE 4915–01–P

[2] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] CNR states that it intends to consummate the discontinuance of its trackage rights on the Line on April 26, 2020, or upon consummation of the transaction proposed in Docket No. FD 36347, whichever is later.

[4] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Adjustment to Specialty Sugar Tariff-Rate Quota Tranches and Opening Dates

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of a change in the quantity, and opening dates, for the fourth and fifth tranches of the specialty sugar tariff-rate quota (TRQ).

DATES: This notice is applicable on March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dylan Daniels, Office of Agricultural Affairs, at (202) 395–9583 or *Dylan.Daniels@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains TRQs for imports of raw cane and refined sugar.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamations 6763 and 7235 (60 FR 1007 and 64 FR 197).

On July 15, 2019, USTR announced that the FY2020 specialty sugar TRQ of 171,656 MTRV would be administered in the following way. *See* 84 FR 33798. The first tranche of 1,656 MTRV was to open October 1, 2019, and all types of specialty sugars would be eligible for entry under this tranche. The second tranche of 50,000 MTRV was to open on October 9, 2019. The third tranche of 50,000 MTRV was to open on January 22, 2020. The fourth tranche of 35,000 MTRV was to open on April 15, 2020. The fifth tranche of 35,000 MTRV was to open on July 15, 2020.

When the third tranche opened on January 22, 2020, U.S. Customs and Border Protection allowed the tranche to be filled in the quantity of 55,000 MTRV, rather than the 50,000 MTRV intended, based on a typo in the U.S. Department of Agriculture's announcement of June 27, 2019. *See* 84 FR 30691. To correct this quantity in order to limit entries to the total amount established at 171,656 MTRV, USTR is reducing the quantity of the fifth tranche by 5,000 MTRV to 30,000 MTRV. USTR is combining the fourth tranche of 35,000 MTRV, and the fifth tranche of 30,000 MTRV, into a combined special tranche of 65,000 MTRV, which will open on March 30, 2020.

Gregory Doud,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2020–06284 Filed 3–25–20; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September of 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and corrects technical errors in previously announced exclusions.

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the $200 billion action, to August 7, 2020. The amendments announced in this notice are retroactive to the date the original exclusions were published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018),

83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), and 85 FR 15015 (March 16, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $200 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, and March 2020. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, 84 FR 69012, 85 FR 549, 85 FR 6674, 85 FR 9921, and 85 FR 15015. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005*.

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set forth in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set forth in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set forth in the Annex, the exclusions are reflected in one 10-digit HTSUS subheading, which covers one exclusion request, and 176 specially prepared product descriptions, which cover 202 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer benefitting from the product exclusion filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions found in any particular request for exclusion.

Paragraph A, subparagraphs 3 through 5 of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex. Paragraph B of the Annex contains amendments reflecting technical corrections to certain notes to the HTSUS, specifically U.S. note 20(pp), published at 85 FR 549 (January 6, 2020). Paragraph C of the Annex contains amendments reflecting technical corrections to certain notes to the HTSUS, specifically U.S. note 20(qq)(4) and U.S. note 20(qq)(6), published at 85 FR 6674 (February 5, 2020).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

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ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.43 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.43	Articles the product of China, as provided for in U.S. note 20(vv) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading"		

2. by inserting the following new U.S. note 20(vv) to subchapter III of chapter 99 in numerical sequence:

"(vv) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03. See 83 Fed. Reg. 47974 (September 21, 2018) and 84 Fed. Reg. 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

1) 7002.10.2000
2) Tilapias, frozen, each weighing not more than 115 g (described in statistical reporting number 0304.61.0000)
3) Shells of oysters (Crassostrea angulate) (described in statistical reporting number 0508.00.0000)
4) Honeydew melon seeds (described in statistical reporting number 1207.70.0075)

5) Hot pepper seeds, of a kind used for sowing (described in statistical reporting number 1209.91.6090)
6) F1 hybrid pumpkin seeds, oval in shape, with a white outer husk, measuring not more than 10 mm, of a kind used for sowing (described in statistical reporting number 1209.91.8055)
7) Eggplant seeds, of a kind used for sowing (described in statistical reporting number 1209.91.8090)
8) Endive seeds, of a kind used for sowing (described in statistical reporting number 1209.91.8090)
9) Gourd seeds, of a kind used for sowing (described in statistical reporting number 1209.91.8090)
10) Tomatillo seeds, of a kind used for sowing (described in statistical reporting number 1209.91.8090)
11) Crabmeat of red swimming crabs (Portunus haanii) packed fresh and pasteurized or frozen in airtight containers (described in statistical reporting number 1605.10.2059)
12) Synthetic silica gel, in amorphous granules, of a kind used as a catalyst support (described in statistical reporting number 2811.22.1000)
13) α-Naphthol (CAS number 90-15-3) (described in statistical reporting number 2907.15.1000)
14) Glyoxal (CAS No. 107-22-2) (described in statistical reporting number 2912.19.3000)
15) (2-Hydroxy-4-methoxyphenyl)phenylmethanone (CAS No. 131-57-7) (Oxybenzone (INN)) and (2-Hydroxy-4-octoxyphenyl)phenylmethanone (CAS No. 1843-05-6) (Octabenzone (INN)) (described in statistical reporting number 2914.50.3000)
16) 2,2-Dichloroacetyl chloride (CAS No. 79-36-7) (described in statistical reporting number 2915.40.5050)
17) Sodium adipate (1,4-butanedicarboxylic acid, disodium salt) (IUPAC name: disodium hexanedioate) (CAS No. 7486-38-6) (described in statistical reporting number 2917.12.5000)
18) 4-Aminophenol (CAS No. 123-30-8) (described in statistical reporting number 2922.29.8190)
19) Diuron (IUPAC name: 3-(3,4-dichlorophenyl)-1,1-dimethylurea) (CAS No. 330-54-1) (described in statistical reporting number 2924.21.1600)
20) 2-((3-Fluoro-4-(methylcarbamoyl)-phenyl)amino)-2-methylpropanoic acid (CAS No. 1289942-66-0) (described in statistical reporting number 2924.29.7100)
21) 3,4-Difluorobenzonitrile (CAS No. 64248-62-0) (described in statistical reporting number 2926.90.4300)
22) Octocrylene (IUPAC name: 2-ethylhexyl 2-cyano-3,3-diphenylprop-2-enoate) (CAS No. 6197-30-4) (described in statistical reporting number 2926.90.4801)
23) 3-Cyclopentylacrylonitrile (IUPAC name: (E)-3-Cyclopentylprop-2-enenitrile) (CAS No. 591769-05-0) (described in statistical reporting number 2926.90.5050)
24) Acetonitrile (CAS No. 75-05-8) (described in statistical reporting number 2926.90.5050)

25) N-(n-Butyl)thiophosphoric triamide (IUPAC name: N-Diaminophosphinothioylbutan-1-amine) (CAS No. 94317-64-3) (described in statistical reporting number 2929.90.5090)
26) (4-Chloro-2-fluoro-3-methoxyphenyl) boronic acid (CAS No. 944129-07-1) (described in statistical reporting number 2931.90.3000)
27) 2-Phosphonobutane-1,2,4-tricarboxylic acid and its salts (CAS #40372-66-5) (described in statistical reporting number 2931.90.7000)
28) Clothianidin technical (CAS No. 210880-92-5) (IUPAC name: E-1-[(2-Chloro-1,3-thiazol-5-yl)methyl]-3-methyl-2-nitroguanidine) (described in statistical reporting number 2934.10.9000)
29) 2-Mercaptobenzothiazole (CAS No. 149-30-4) (described in statistical reporting number 2934.20.1500)
30) Flux powder consisting wholly of inorganic substances, including but not limited to silicon dioxide, titanium oxide, manganese oxide, aluminum oxide, and calcium fluoride, for submerged arc welding (described in statistical reporting number 3810.90.2000)
31) Chitosan (CAS No. 9012-76-4) (described in statistical reporting number 3913.90.2090)
32) Boxes, cases, crates or similar articles of plastics certified under UN (United Nations) standard 4H2 as suitable for the conveyance of lithium ion batteries and equipment powered by lithium ion batteries (described in statistical reporting number 3923.10.9000)
33) Parts of fences fabricated from profile shapes of heading 3916 (described in statistical reporting number 3925.90.0000)
34) Gaskets, washers and other seals (other than O-rings) of silicone plastic, each weighing at least 5 g but not more than 400 g (described in statistical reporting number 3926.90.4590)
35) Hoses of vulcanized rubber other than hard rubber, not reinforced or otherwise combined with other materials, without fittings, each weighing at least 10 g but not more than 1,000 g and measuring at least 2 cm but not more than 500 cm in length (described in statistical reporting number 4009.11.0000)
36) Hoses of vulcanized rubber other than hard rubber, reinforced or otherwise combined only with textile materials, without fittings (described in statistical reporting number 4009.31.0000)
37) Hoses of vulcanized rubber other than hard rubber, reinforced or otherwise combined with materials other than metals or textiles, without fittings (described in statistical reporting number 4009.41.0000)
38) New tubeless pneumatic tires of rubber having a "herring-bone" tread and a tire ply rating of 6R, measuring not more than 61 cm in outside diameter and at least 20.3 cm but not more than 25.4 cm in width, for mounting on a rim measuring 35.6 cm in diameter (described in statistical reporting number 4011.90.1010)
39) New radial pneumatic tires of rubber, each with an 8 ply rating, measuring not more than 67 cm in outside diameter and at least 22 cm but not over 28 cm in width,

suitable for mounting on a rim measuring 30.5 cm in diameter (described in statistical reporting number 4011.90.2010)

40) New radial pneumatic tires of rubber, measuring 66 cm or more but not exceeding 82 cm in diameter, and 22 cm or more but not exceeding 39 cm in width, with steel internal carcass and sidewalls reinforced with three belts (described in statistical reporting number 4011.90.2010)

41) New bias-ply pneumatic tires of rubber, with a 6 ply rating, each measuring at least 61 cm but not more than 62 cm in diameter, and at least 20 cm but not more than 31 cm in width, suitable for mounting on a rim measuring 30.5 cm in diameter (described in statistical reporting number 4011.90.8010)

42) Compression molded floor mats for golf carts, of vulcanized rubber other than hard rubber or cellular rubber, each measuring not more than 1,038 mm by 605 mm (described in statistical reporting number 4016.91.0000)

43) Grommets, vibration dampers, and similar protective separators, of molded ethylene-propylene-non-conjugated diene monomer rubber (EPDM), each weighing not more than 2.27 kg, of a kind used in motorcycles or personal watercraft (PWC) (described in statistical reporting number 4016.99.6050)

44) Backpacks and duffel bags with an outer surface of a blend of hemp and organic cotton, each measuring not less than 38 cm by 30 cm by 15 cm and not more than 36 cm by 72 cm by 34 cm (described in statistical reporting number 4202.92.2000)

45) Backpacks with outer surface of textile materials of man-made fibers, each measuring at least 35 cm but not more than 75 cm in height, at least 19 cm but not more than 34 cm in width, and at least 5 cm but not more than 26 cm in depth (described in statistical reporting number 4202.92.3120)

46) Fishing tackle bags of man-made fibers, each measuring at least 5 cm but not more than 17 cm in width, at least 23 cm but not more than 27 cm in height and at least 37 cm but not more than 43 cm in depth, with a shoulder strap and carrying handles (described in statistical reporting number 4202.92.3131)

47) Surfboard covers, each with an outer surface of polyester, weighing at least 0.85 kg but not more than 6 kg, measuring at least 150 cm but not more than 307 cm in height and at least 55 cm but not more than 66 cm in width (described in statistical reporting number 4202.92.3131)

48) Tote bags with outer surface of man-made fibers, with handles, with printing on front and back, each bag measuring more than 20 cm but not more than 36 cm in width and more than 22 cm but not more than 39 cm in height, with a gusset measuring not more than 16 cm (described in statistical reporting number 4202.92.3131)

49) Bags with outer surface of textile materials of man-made fibers, each with a base of plastics and a coil zipper, weighing 0.22 kg or more but not over 4.6 kg, shaped to fit powersports vehicles (including but not limited to off-road vehicles, all-terrain vehicles, snowmobiles and motorcycles) (described in statistical reporting number 4202.92.9100)

50) Pouches and tool holsters of woven man-made fibers, each measuring at least 13 cm but not more than 19 cm in height, at least 4 cm but not more than 11 cm in width and

at least 3 cm but not more than 5 cm in depth, valued not over $16 each, designed to fit over the wearer's belt or attach to belt loops to provide hands-free carrying of mobile phones, tools, flashlights and articles of similar size (described in statistical reporting number 4202.92.9100)

51) Gun cases (boots) of plastics, each with interior padding, dust-proof and water-resistant shell and steel brackets for mounting (described in statistical reporting number 4202.99.9000)

52) Women's, girls', and infants' pants, skirts and dresses, of polyurethane-coated leather of swine or of polyurethane-coated composition leather of swine (described in statistical reporting number 4203.10.4095)

53) Printed cartons, boxes or cases of corrugated paper or paperboard, other than sanitary food or beverage containers (described in statistical reporting number 4819.10.0040)

54) Notebooks of paper or paperboard, each incorporating a plastic toy building block on the cover, measuring at least 13 cm but not more than 16 cm on the short side, at least 15 cm but not more than 22 cm on the long side and at least 1 cm but not more than 3 cm in thickness, with at least 192 but no more than 352 ruled or blank pages (described in statistical reporting number 4820.10.2060)

55) Plates, bowls or cups of molded or pressed bamboo pulp, each weighing at least 3 g but not more than 92 g (described in statistical reporting number 4823.70.0020)

56) Clamshell containers, pizza pans, lids, compartmentalized and other trays of molded or pressed bamboo pulp, each weighing at least 3 g but not more than 95 g (described in statistical reporting number 4823.70.0040)

57) Yarn of cashmere or camel hair, carded but not combed, not put up for retail sale (described in statistical reporting number 5108.10.8000)

58) Polyester filament tow, weighing at least 225 ktex but not more than 275 ktex (described in statistical reporting number 5501.20.0000)

59) Polypropylene fiber tow weighing at least 225 ktex but not more than 275 ktex (described in statistical reporting number 5501.40.0000)

60) Textile fabrics of woven polyester or of a blend of cotton and polyester, coated on one side with expanded polyurethane which comprises more than 70 percent of the total weight of the product, the entire thickness of the fabric measuring at least 0.8 mm but not more than 1.22 mm in thickness and weighing at least 350 g/m² or more but not more than 425 g/m² (described in statistical reporting number 5903.20.2000)

61) Circular single knitted fabric, containing by weight 96 percent polyester and 4 percent spandex, dyed (described in statistical reporting number 6006.32.0080)

62) Freestanding bathtubs carved from solid marble blocks, not laminated or glued, each with dimensions not over 215 cm by 125 cm by 70 cm and weighing not more than 1,600 kg (described in statistical reporting number 6802.91.1500)

63) Sinks and sink pedestals of marble for bathroom and kitchen use, each measuring not more than 110 cm by 95 cm by 95 cm and weighing not more than 415 kg (described in statistical reporting number 6802.91.1500)

64) Worked monumental or building stone articles of genuine geological granite, birdbaths, benches, fountains, and fire pits (described in statistical reporting number 6802.93.0090)

65) Sandstone known as brown wave, of a kind used in outdoor living spaces, containing one textured side and up to four chiseled edges with a density of 2,750 kg/m^3 (described in statistical reporting number 6802.99.0060)

66) Sandstone with a flamed finish on one side and a length of 200 mm or more but not over 3,100 mm, a width of 100 mm or more but not over 1,380 mm and a thickness of 30 mm or more but not over 180 mm (described in statistical reporting number 6802.99.0060)

67) Figurines and statuettes of agglomerated stone, each measuring at least 100 mm but not more than 310 mm in height and weighing at least 0.1 kg but not more than 2.1 kg (described in statistical reporting number 6810.99.0080)

68) Synthetic graphite, in the form of rounds measuring at least 5 cm but not more than 153 cm in diameter and at least 25 cm but not more than 204 cm in length, or rectangles measuring at least 40 cm but not more than 61 cm in width, at least 40 cm but not more than 94 cm in height, and 152 cm or more but not more than 280 cm in length (described in statistical reporting number 6815.10.0100)

69) Articles of ceramics, other than porcelain or china, having a hardness equivalent of 9 or more on the Mohs scale, machined to shape, weighing not more than 2.4 kg and measuring not more than 45.5 cm by 3.1 cm by 8.9 cm (described in statistical reporting number 6909.12.0000)

70) Inert ceramic rings and spheres, of a kind used for bed grading in mixed-layered filtering and purification columns (described in statistical reporting number 6909.19.5095)

71) Screen protectors of tempered safety glass, with adhesive on one side, in rectangular sheets having rounded corners, each measuring at least 55 mm by 120 mm but no more than 212 mm by 278 mm and at least 0.51 mm but no more than 0.55 mm in thickness (described in statistical reporting number 7007.19.0000)

72) Sheets of tempered safety glass, coated with silicone oxide, having a surface area of less than 2.5 m^2, designed to be placed over solar cell panels for protection from external damage (described in statistical reporting number 7007.19.0000)

73) Windshields of laminated safety glass, of a size and shape for vehicles, each weighing at least 10.9 kg but not over 15.4 kg (described in statistical reporting number 7007.21.1010)

74) Rear-view mirrors for vehicles, composed of stainless steel, aluminum, glass filled nylon, polyethylene, and acrylonitrile-butadiene-styrene, each weighing at least 500 g but not more than 1 kg, with mirrors measuring at least 180 mm but not more than 400 mm in length (described in statistical reporting number 7009.10.0000)

75) Rear-view mirrors for vehicles, each consisting of a multi-curvature convex glass mirror, a steel case and a heating element (described in statistical reporting number 7009.10.0000)

76) Replacement kits for rear-view mirrors for vehicles, each consisting of a multi-curvature convex mirror, a gasket and a heating element (described in statistical reporting number 7009.10.0000)

77) Windows of stainless steel incorporating tempered glass, each fitted with a rubber gasket that provides a water-tight seal when closed, designed for installation in ships and boats of chapter 89 (described in statistical reporting number 7308.30.1000)

78) Steel tanks, each of a capacity of at least 477 liters but not over 23,848 liters and weighing at least 100 kg but not more than 2,250 kg, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment (described in statistical reporting number 7309.00.0030)

79) Square-shaped barrels of stainless steel, each with slatted sides and a maximum capacity of 228 liters (described in statistical reporting number 7310.10.0010)

80) Skid chains of steel, with links measuring not over 8 mm in diameter, to fit off-road vehicle tires measuring 63 cm or more but not over 67 cm in diameter (described in statistical reporting number 7315.20.1000)

81) Steel cooking grates comprising parts of stoves and ranges, each weighing not less than 1 kg, measuring not less than 40 cm in length, not less than 48 cm in width, and not less than 5 cm in height (described in statistical reporting number 7321.90.1000)

82) Bird feeders, predominantly of iron or steel, with glass elements, each feeder measuring at least 25 cm but not more than 36 cm in height, and weighing at least 0.6 kg but not more than 1.4 kg (described in statistical reporting number 7323.99.9080)

83) Parts of showers, comprising shower wand adjustable slide bars, of stainless steel, with or without finishes of other metals, each weighing 0.44 kg or less, measuring at least 48.3 cm but not more than 91.5 cm in length and at least 1.9 cm but not more than 2.6 cm in diameter (described in statistical reporting number 7324.90.0000)

84) Shower arms of stainless steel, with or without finishes of other metals, threaded at both ends, each weighing not less than 0.08 kg but not more than 0.35 kg, measuring at least 15 cm but not more than 64 cm in length and not more than 2 cm in diameter (described in statistical reporting number 7324.90.0000)

85) Carabiners of stainless steel, not suitable for climbing applications (described in statistical reporting number 7326.90.8688)

86) Housings of steel designed for oil or natural gas wellheads, each with threaded or welded bottom and threaded top, each weighing at least 284 kg but not more than 1,200 kg, measuring at least 52 cm but not more than 105 cm in length, at least 42 cm but not more than 60 cm in outer diameter, with a bore diameter of not less than 20 cm (described in statistical reporting number 7326.90.8688)

87) Tubing heads of steel for oil or natural gas wellheads, each measuring at least 39 cm but not more than 107 cm in length, at least 57 cm but not more than 78 cm in outer diameter, with a bore diameter of not less than 13 cm (described in statistical reporting number 7326.90.8688)

88) Escutcheons of brass, with or without other metal finishes, each weighing not more than 0.5 kg, measuring not more than 23 cm by 23 cm by 3 cm, designed as trim

around faucets or shower fixtures (described in statistical reporting number 7419.99.5010)

89) Faucet parts, of brass, designed for holding the aerator, each not over 4 cm in height (described in statistical reporting number 7419.99.5010)

90) Shower arms of brass, each for connecting the showerhead to the water supply (described in statistical reporting number 7419.99.5010)

91) Carabiners of aluminum, not suitable for climbing applications (described in statistical reporting number 7616.99.5190)

92) Key rings of zinc, with leather adornment (described in statistical reporting number 7907.00.6000)

93) Kits of auger bits for woodworking of high carbon steel (with cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium), each bit measuring not less than 0.95 cm but not more than 3.81 cm in diameter and not less than 15.24 cm but not more than 45.72 cm in length (described in statistical reporting number 8207.50.2070)

94) Kits of spade bit blades of high carbon steel (with cutting part not containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium), each bit measuring at least 0.635 cm but not more than 3.81 cm in diameter and at least 15.24 cm but not more than 45.72 cm in length (described in statistical reporting number 8207.50.6000)

95) Castors with mountings of steel with wheels of rubber or plastic, each having a wheel diameter (including tires) of more than 60 mm but less than 210 mm (described in statistical reporting number 8302.20.0000)

96) Mountings and fittings suitable for motor vehicles of iron or steel, of aluminum or of zinc, other than pneumatic cylinders (described in statistical reporting number 8302.30.3060)

97) Cleats and chocks of stainless steel for boats and ships (described in statistical reporting number 8302.49.6055)

98) Screen door cross bars of aluminum, each adjustable, measuring at least 53 cm but not more than 74 cm in length, weighing not more than 0.6 kg, with polypropylene end caps (described in statistical reporting number 8302.49.6085)

99) Pistons of cast aluminum, of a kind used in spark-ignition internal combustion piston engines for vehicles of heading 8703, each measuring 73 mm in diameter and 45 mm in height (described in statistical reporting number 8409.91.5085)

100) Cylinder heads of aluminum for motorcycle engines, each weighing at least 3.6 kg but not more than 6.4 kg (described in statistical reporting number 8409.91.9990)

101) Cooling medium pumps for internal combustion piston engines of the motor vehicles of headings 8703 or 8704 (described in statistical reporting number 8413.30.9090)

102) Stationary air compressors (not reciprocating, not rotary), each powered by 12 V DC motor, with maximum output pressure of 1.04 MPa and maximum output volume of 57 liters/min, weighing not more than 6 kg, with braided output leader hose and one-way check valve attached to the cylinder head (described in statistical reporting number 8414.80.1680)

103) Hydraulic jacks of a kind for raising vehicles, with a lifting capacity of not more than 550 kg (described in statistical reporting number 8425.42.0000)

104) Hydraulic lifts of steel weighing not more than 30 kg, comprising a base, two lift arms and a hydraulic bottle jack, with a weight limit of not more than 250 kg (described in statistical reporting number 8425.42.0000)

105) Screw jacks and scissor jacks, each comprising a base, two lift arms and adjustable wheel pads, weighing at least 22 kg but not more than 42 kg, with a weight limit of not more than 342 kg (described in statistical reporting number 8425.49.0000)

106) Bandsaws for working wood, bench top, each valued under $1,000, with 115 V motor, measuring not more than 88 cm in height, not more than 54 cm in width and not more than 42 cm in depth, weighing not more than 36 kg with a cutting capacity not exceeding 36 cm in width (described in statistical reporting number 8465.91.0064)

107) Bandsaws for working wood, floor standing, each valued under $1,000, with 115 V motor, measuring not more than 190 cm in height, at least 63 cm but not more than 88 cm in width and at least 63 cm but not more than 66 cm in depth, weighing at least 99 kg but not more than 130 kg with a cutting capacity not exceeding 36 cm in width (described in statistical reporting number 8465.91.0064)

108) Bandsaws for working wood, valued under $1,000 each, floor standing, with 115 V motor, measuring not over 190 cm in height, at least 63 cm but not more than 88 cm in width and at least 63 cm but not more than 66 cm in depth, weighing at least 99 kg but not more than 130 kg with a cutting capacity not exceeding 36 cm in width (described in statistical reporting number 8465.91.0064)

109) Straps for securing articles, each consisting of a polyester webbing strap of a width not exceeding 26 mm with steel hooks at the ends and a ratchet mechanism for tightening the strap, in lengths not over 2.5 m (described in statistical reporting number 8479.89.9499)

110) Handwheel-operated gate valves of forged steel, each measuring at least 37 cm but not more than 102 cm in width (at the circular connector flanges) and at least 55 cm but not more than 288 cm in height (from the bottom of the valve to the top of the handwheel), having a bore measuring at least 5 cm but not more than 18 cm in diameter, weighing at least 79 kg but not more than 3,015 kg (described in statistical reporting number 8481.80.3055)

111) Camshafts designed for use solely or principally with spark-ignition internal combustion piston engines for off-road vehicles and snowmobiles (described in statistical reporting number 8483.10.1030)

112) Crankshafts designed for use with diesel engines having a displacement of not more than 12 liters (described in statistical reporting number 8483.10.3050)

113) Toothed wheels and sprockets other than chain sprockets for motorcycles, off-road vehicles and snowmobiles constituting an integral component of an engine or motor (described in statistical reporting number 8483.90.5090)

114) Single phase AC electric motors (other than gear motors), of an output of 56 W or more but not exceeding 69 W, each measuring no more than 9 cm in length and no

more than 11.5 cm in diameter, weighing no more than 2 kg, in a housing of base metals, with a switch (described in statistical reporting number 8501.40.2040)

115) Single-phase AC electric motors incorporating permanent split capacitors, each of an output range of 367 W or more but not exceeding 565 W, operating at not less than 115 V of alternating current (VAC) but not more than 230 VAC, capable of operating while submerged in water, each weighing at least 7 kg but not more than 11 kg, measuring not more than 10 cm in diameter and at least 22 cm but not exceeding 34 cm in length (described in statistical reporting number 8501.40.4040)

116) Single-phase AC electric motors, other than gear motors, incorporating permanent split capacitors, each of an output range of 746 W or more but not exceeding 1.13 kW, operating at not less than 115 V of alternating current (VAC) but not more than 250 VAC, capable of operating while submerged in water, each weighing at least 9 kg but not more than 12.5 kg, measuring not more than 10 cm in diameter and at least 25 cm but not exceeding 36 cm in length (described in statistical reporting number 8501.40.6040)

117) Battery chargers designed to charge the batteries in electrically powered golf carts and similar utility vehicles for a voltage not exceeding 48 V, measuring no more than 20 cm in width, 30 cm in length, and 15 cm in height (described in statistical reporting number 8504.40.9550)

118) Static converters, each with input voltage range of 10 V or more but not exceeding 26 V and a power output range of at least 5 A but not more than 240 A, weighing not more than 23 kg (described in statistical reporting number 8504.40.9550)

119) Inductors, each with inductance of 22 microhenrys (μH), a tolerance of no greater than 20 percent, with a DC resistance of 198 milliohms (mΩ) and a DC current of 1.9 A (described in statistical reporting number 8504.50.8000)

120) Inductors, each with inductance of 220 microhenrys (μH), a tolerance of no greater than 20 percent, with a DC resistance of 550 milliohms (mΩ) and a DC current of 510 milliamps (mA) (described in statistical reporting number 8504.50.8000)

121) Inductors, each with inductance of 470 microhenrys (μH), a tolerance of no greater than 20 percent, with a DC resistance of 700 milliohms (mΩ) and a DC current of 540 milliamps (mA) (described in statistical reporting number 8504.50.8000)

122) Lead-acid storage batteries, 12 V, of a kind used in starting piston engines, each measuring not more than 167 cm in height, at least 91 cm but not more than 92 cm in width and weighing at least 4.8 kg but not more than 5.3 kg (described in statistical reporting number 8507.10.0030)

123) Ignition coils for spark-ignition or compression-ignition engines of a kind designed to be mounted in powersports vehicles, including off-road vehicles, all-terrain vehicles, snowmobiles and motorcycles (described in statistical reporting number 8511.30.0080)

124) Lighting equipment designed for illuminating the interior of the vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711 incorporating LED lamps, each measuring not more than 128 mm by 75 mm by 36 mm (described in statistical reporting number 8512.20.2040)

125) Color television cameras of a kind used with vehicle displays (described in statistical reporting number 8525.80.3010)

126) Radiobroadcast receiver kits, each comprising a radiobroadcast receiver not capable of operating without an external source of power, the foregoing of a kind used in motor vehicles, not combined with sound recording or reproducing apparatus, incorporating an FM only or AM/FM only tuner, two speakers measuring not more than 135 mm in diameter, a 45 W 4-channel amplifier and an external antenna (described in statistical reporting number 8527.29.4000)

127) Indicator panels incorporating segmented liquid crystal devices (LCDs) suitable for use in motor vehicles and designed to display a limited number of characters or icons, each panel measuring not more than 99 mm in width and not more than 61 mm in height (described in statistical reporting number 8531.20.0020)

128) Indicator panels incorporating LEDs, designed for use in medical infusion equipment (described in statistical reporting number 8531.20.0040)

129) Printed circuit boards, with a base of glass reinforced epoxy laminate material that is compliant with NEMA grade FR-4 fire resistance, not flexible, with 10 layers, designed for use in a flow meter, and measuring not more than 6.35 cm by 6.35 cm by 0.1575 cm (described in statistical reporting number 8534.00.0020)

130) Printed circuit board, 2 layers, LED left-handed tail light, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder with a glass transition temperature of 150 degrees C, with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

131) Printed circuit board, 2 layers, LED left-handed tail stop light, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder, with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

132) Printed circuit board, 2 layers, LED right-handed tail stop light, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder, with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

133) Printed circuit board, 2 layers, overhead council assembly of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder, with not more than 0.03 kg of copper, with lead free HASL finish (described in statistical reporting number 8534.00.0095)

134) Printed circuit board, 2 layers, overhead council unit, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder, with lead free HASL finish (described in statistical reporting number 8534.00.0095)

135) Printed circuit board, 2 layers, with high- or low-side driver pulse width modulation, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder with a glass transition temperature of 150 degrees C with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

136) Printed circuit board, 4 layers, rear view mirror utilized, of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder, with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

137) Printed circuit boards, formed as 2 layers, DS video mirror of FR-4 woven fiberglass cloth with a flame resistant epoxy resin binder with a glass transition temperature of

150 degrees C with not more than 0.03 kg of copper (described in statistical reporting number 8534.00.0095)

138) Digital sound processing apparatus capable of connecting to a wired or wireless network for the mixing of sound, each capable of mixing 16, 24, 32 or 64 channel, each measuring not more than 17 cm in height, not more than 60 cm in depth, and not more than 83 cm in width (described in statistical reporting number 8543.70.9100)

139) Electric conductors, for a voltage not exceeding 1,000 V, with stranded 18-gauge copper wire and SPT-2 outer insulation, with either a 2-prong polarized plug or a 3-prong grounded plug on one end, such plugs with an integrated non-replaceable fuse, such conductors measuring at least 210 cm but not more than 250 cm in length (described in statistical reporting number 8544.42.9090)

140) Bumpers of steel or aluminum, other than stampings, for off-road vehicles of headings 8701 to 8705 (described in statistical reporting number 8708.10.3050)

141) Vent insulators to fit a standard vent opening of 35.56 cm by 35.56 cm on a recreational vehicle, each composed of foam encased in polyester fleece fabric, whether or not also featuring reflective foil (described in statistical reporting number 8708.29.5060)

142) Road wheels of steel for vehicles of heading 8703, each measuring at least 32 cm but not more than 37 cm in diameter, at least 11 cm but not more than 21 cm in width and weighing at least 5.2 kg but not over 6.7 kg (described in statistical reporting number 8708.70.4560)

143) Road wheels of steel for vehicles of heading 8703, each measuring at least 37 cm but not more than 46 cm in diameter and at least 19 cm but not over 26 cm in width (described in statistical reporting number 8708.70.4560)

144) Wheel spacers of aluminum for the motor vehicles of heading 8703, measuring at least 25 mm but not more than 45 mm in thickness (described in statistical reporting number 8708.70.6060)

145) Parts of suspension systems of off-road vehicles of headings 8701 through 8705 and snowmobiles of heading 8703 (described in statistical reporting number 8708.80.6590)

146) Torque rods, also known as torque arms, radius rods or radius arms (described in statistical reporting number 8708.80.6590)

147) Radiators of aluminum, each measuring at least 335 mm but not more than 630 mm in length, at least 167.5 mm but not more than 355 mm in width, and at least 37.5 mm but not more than 60 mm in height (described in statistical reporting number 8708.91.5000)

148) Mufflers and exhaust pipes for all-terrain vehicles (ATVs) and snowmobiles of heading 8703 (described in statistical reporting number 8708.92.5000)

149) Steering boxes and steering columns of steel for all-terrain vehicles (ATVs) of heading 8703 and other off-road vehicles (described in statistical reporting number 8708.94.5000)

150) Parts of the motor vehicles of headings 8701, 8702, 8704 and 8705, consisting of housings of cast iron for steering gears, each weighing not more than 20 kg,

measuring at least 11 cm but not more than 29 cm in length, at least 9 cm but not more than 19 cm in width, and at least 14 cm but not more than 24 cm in height (described in statistical reporting number 8708.94.7000)

151) Steering cylinder heads of cast iron for motor vehicles of chapter 87, each weighing at least 1 kg but not more than 3 kg (described in statistical reporting number 8708.94.7000)

152) Housing covers (with or without bearings) of carbon steel for steering gears of the motor vehicles of headings 8701 to 8705 (except for tractors other than road tractors) (described in statistical reporting number 8708.94.7550)

153) Pitman arm retainers of carbon steel designed for steering gears for the vehicles of heading 8701, 8702, 8704, or 8705, other than steering gears for tractors for agricultural use but including those for road tractors (described in statistical reporting number 8708.94.7550)

154) Castings of aluminum for hub lock assemblies of motor vehicles of heading 8703 (described in statistical reporting number 8708.99.6890)

155) Shift lever weldments, sprockets, shafts, bearing carriers, and rod shifters, all the foregoing being parts of power trains for the motor vehicles of headings 8701 to 8705 (described in statistical reporting number 8708.99.6890)

156) Covers for automobile seats or passenger compartments, of textile fabric, with or without fastening hardware, presented separately or in sets put up for retail sale (described in statistical reporting number 8708.99.8180)

157) Intercooler pipes of cast aluminum, each weighing at least 0.37 kg but not more than 0.643 kg (described in statistical reporting number 8708.99.8180)

158) Racks designed to fit into receiver hitches of vehicles of headings 8701 to 8705, for transporting bicycles (described in statistical reporting number 8708.99.8180)

159) Trailer hitch kits of alloy steel or carbon steel, for the vehicles of headings 8701 to 8705, other than tractors, except including road tractors (described in statistical reporting number 8708.99.8180)

160) Bicycles, including mountain-type, with drop bar, tubeless, folding (described in statistical reporting number 8712.00.4800)

161) Trailers with steel or aluminum frames, single axle, each measuring at least 1.5 m but not more than 2.5 m in width, at least 2.4 m but not more than 5.8 m in length, and weighing at least 110 kg but not more than 730 kg (described in statistical reporting number 8716.40.0000)

162) Castors, each comprising a polyurethane tread over a polypropylene hub, measuring at least 7.5 cm but not more than 20.5 cm in diameter and at least 2.5 cm but not more than 5.5 cm in width, for use with retail shopping carts, material handling carts, light industrial carts, baker carts, laboratory carts, medical carts or pharmaceutical carts (described in statistical reporting number 8716.90.3000)

163) Mounted camera lenses, each with a M12 mount configuration, with an 8.46 mm sensor format and focal lengths between 2.8 mm and 16.0 mm, focal ratio (F/No) of 1.4 or greater but not exceeding 6.6 and a fixed iris (described in statistical reporting number 9002.11.9000)

164) Seats of a kind used for automobiles, not reclining, incorporating padding of polymeric foam and seat covers of PVC (described in statistical reporting number 9401.20.0000)

165) Adjustable wire shelving units of steel, other than for household use, comprising vertical poles, foot caps or casters, clips and shelves, each when fully assembled measuring at least 35 cm or more but not more than 183 m in width, at least 35 cm but not more than 77 cm in depth, and at least 137 cm but not more than 183 cm in height (described in statistical reporting number 9403.20.0081)

166) Storage racks of steel, powder-coated, designed to hang from overhead support, each weighing not more than 37 kg, measuring not more than 123 cm in width, not more than 123 cm in height and not more than 245 cm in length (described in statistical reporting number 9403.20.0081)

167) Shelving units of chrome plated steel, each consisting of wire shelves measuring at least 35 cm but not more than 62 cm in width and at least 61 cm but not more than 183 cm in length and supporting posts, with leveling feet, measuring not more than 30 cm in length (described in statistical reporting number 9403.20.0090)

168) Cabinets of wood with glass fronts, each measuring at least 208 cm but not more than 234 cm in height, at least 86 cm but no more than 128 cm in width and at least 40 cm but not more than 49 cm in depth (described in statistical reporting number 9403.60.8081)

169) Cabinets of wood with glass fronts, each measuring at least 91 cm but not more than 117 cm in height, at least 165 cm but no more than 216 cm in width and at least 38 cm but not more than 59 cm in depth (described in statistical reporting number 9403.60.8081)

170) Outdoor tables of artificial stone, each measuring no more than 93 cm by 93 cm by 63 cm, with a built-in gas-burning fire pit (described in statistical reporting number 9403.89.6015)

171) Sets of rectangular laundry organizers consisting of at least six, but not more than nine collapsible hampers of ethylene-vinyl acetate (EVA) fabric, each with a drawstring top, an exterior zip pocket, and rope handles, designed to stand on the floor and fold up when not in use (described in statistical reporting number 9403.89.6020)

172) Parts of counters, racks, display cases, and similar fixtures of wood other than cane, osier, bamboo or similar materials (described in statistical reporting number 9403.90.7080)

173) Parts of counters, racks, display cases, and similar fixtures of base metal, other than welded wire rack decking (described in statistical reporting number 9403.90.8041)

174) Lamps with bases of agglomerated stone that are figurines, each measuring at least 45 cm but not more than 77 cm in height, weighing at least 1.3 kg but not more than 2.8 kg, with a decorated fabric shade (described in statistical reporting number 9405.20.8010)

175) LED lamps other than of base metal, each with height adjustable from at least 19 cm to not more than 38 cm, with touch switch controlling power, brightness and three

color modes (warm, bright and natural daylight illumination), 5 V, 2.1 A USB charging port, and digital LCD display featuring time, date, and temperature display (described in statistical reporting number 9405.20.8010)

176) LED backlight modules, each measuring at least 90 mm but not more than 105 mm in length and at least 45 mm but not more than 55 mm in width (described in statistical reporting number 9405.40.8200)

177) Flameless pillar candles with LED lamps powered by batteries, each measuring at least 7.6 cm but not more than 20 cm in diameter and having a wax exterior (described in statistical reporting number 9405.40.8440)

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(ss) to subchapter III of chapter 99;"; and

   b. by inserting the phrase "; or (11) heading 9903.88.43 and U.S. note 20(vv) to subchapter III of chapter 99" after the phrase "U.S. note 20(tt) to subchapter III of chapter 99".

4. by amending U.S. note 20(f) to subchapter III of chapter 99;

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(ss) to subchapter III of chapter 99;"; and

   b. by inserting the phrase "; or (11) heading 9903.88.43 and U.S. note 20(vv) to subchapter II of chapter 99" after the phrase "U.S. note 20(tt) to subchapter III of chapter 99".

5. by amending the Article Description of heading 9903.88.03:

   a. by deleting "9903.88.408 or" and inserting "9903.88.408," in lieu thereof; and

   b. by inserting "or 9903.88.43," after "9903.88.41,".

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24 2018, U.S. note 20(pp) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusions in numerical order after exclusion (68):

   a. (69) Ventilation fans for motor vehicles, consisting of a 12 V DC non-reversible multiple speed electric motor drawing 5 A, with axial fan blade, electric keypad

and circuit board and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)

b. (70) Ventilation fans for motor vehicles, consisting of a 12 V DC non-reversible multiple speed electric motor drawing 5 A, with axial fan blade, keypad and circuit board and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)

c. (71) Ventilation fans for motor vehicles, consisting of a 12 V DC non-reversible multiple speed electric motor drawing 5 A, with axial fan blade, keypad or remote control and circuit board and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)

d. (72) Ventilation fans for motor vehicles, consisting of a 12 V DC non-reversible multiple speed electric motor drawing 5 A, with axial fan blade, network control system and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)

e. (73) Ventilation fans for motor vehicles, consisting of a 12 V DC reversible multiple speed electric motor drawing 5 A, with axial fan blade, electric keypad and circuit board and wire mesh screen, measuring no more than 36 cm by 36 cm (described in statistical reporting number 8414.59.6540)

C. Effective with respect to goods entered for consumption, or withdrawn from the warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018:

a. U.S. note 20(qq)(4) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Sole fillets, individually frozen, each fillet weighing more than 50 g but less than 150 g (described in statistical reporting number 0304.83.5015)"and inserting "0304.83.5015" in lieu thereof.

b. U.S. note 20(qq)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Individually frozen fillets of flounder, including Arrowtooth Flounder (Atheresthes stomias) and Kamchatka Flounder (Atheresthes evermanni), each weighing 80 g or more but not exceeding 200 g (described in statistical reporting number 0304.83.5020)" and inserting "0304.83.5020" in lieu thereof.

[FR Doc. 2020–06276 Filed 3–25–20; 8:45 am]
BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Change in Use of Aeronautical Property at Perry Foley Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by the Taylor County, Florida to release federally obligated land from conditions of the Surplus Property Quitclaim Deed dated April 11, 1947 at the Perry Foley Airport, Perry, Florida. This property was transferred to Taylor County under the authority of the April 11th, 1947, the United States, War Assets Administration and Section 13 of the Surplus Property Act of 1944 (58 Stat. 765). The request includes five (5) parcels adjacent to the airport totaling approximately 17.28 acres. Fair market value of the commercial properties at time of sale was $94,470.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Perry Foley Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before April 27, 2020.

ADDRESSES: Documents are available for review at Perry Foley Airport, and the FAA Orlando Airports District Office, 8724 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Pedro Blanco, Community Planner, FAA Orlando Airports District Office, 8724 SouthPark Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Pedro Blanco, Community Planner, FAA Orlando Airports District Office, 8724 SouthPark Circle, Suite 524, Orlando, FL 32819.

Revision Date 11/22/00.

Issued in Orlando, FL on March 19, 2020.

Bart Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2020–06324 Filed 3–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2020–0001]

Pipeline Safety: Request for Special Permit; Florida Gas Transmission Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comment on a request for special permit received from the Florida Gas Transmission Company (FGT). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by April 27, 2020.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from FGT seeking a waiver from the requirements of 49 CFR 192.611(a) and (d), ''Change in class location: Confirmation or revision of maximum allowable operating pressure'', and § 192.619(a), ''Maximum allowable operating pressure: Steel or plastic pipelines''. This special permit is being requested in lieu of pipe replacement or pressure reduction for thirteen special permit segments in the FGT pipeline system. The FGT system totals 1.92 miles of pipeline located in four (4) counties (Brevard, Lake, Orange, and Osceola) in the State of Florida, where the class locations have changed from Class 1 to Class 3, or Class 2 to Class 3. The pipeline special permit segments are short in length, not contiguous, and comprise of 26-inch and 30-inch diameter pipelines with existing maximum allowable operating pressures of 974 to 977 pounds per square inch gauge (psig). The installation dates of the pipeline segments range from 1968 to 1995.

The request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the FGT pipeline are available for review and public comment in Docket No. PHMSA–2020–0001. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020–06380 Filed 3–25–20; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 240, et al.
Accelerated Filer and Large Accelerated Filer Definitions; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 240, and 249

[Release No. 34–88365; File No. S7–06–19]

RIN 3235–AM41

Accelerated Filer and Large Accelerated Filer Definitions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to the accelerated filer and large accelerated filer definitions to more appropriately tailor the types of issuers that are included in the categories of accelerated and large accelerated filers and promote capital formation, preserve capital, and reduce unnecessary burdens for certain smaller issuers while maintaining investor protections. The amendments exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and that had annual revenues of less than $100 million in the most recent fiscal year for which audited financial statements are available. The amendments also include a specific provision excluding business development companies from the accelerated and large accelerated filer definitions in analogous circumstances. In addition, the amendments increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from $50 million to $60 million, and for exiting large accelerated filer status from $500 million to $560 million. Further, the amendments add a revenue test to the transition thresholds for exiting from both accelerated and large accelerated filer status. Finally, the amendments add a check box to the cover pages of Forms 10–K, 20–F, and 40–F to indicate whether an internal control over financial reporting (''ICFR'') auditor attestation is included in the filing. As a result of the amendments, certain low-revenue issuers will remain obligated, among other things, to establish and maintain ICFR and have management assess the effectiveness of ICFR, but they will not be required to have their management's assessment of the effectiveness of ICFR attested to, and reported on, by an independent auditor.

DATES: This final rule is effective April 27, 2020.

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel, in the Division of Corporation Finance, at (202) 551–3430, and Brian Johnson, Assistant Director, in the Division of Investment Management, at (202) 551–6792, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are amending 17 CFR 229.10(f) (''Item 10(f)'') under Regulation S–K;[1] 17 CFR 230.405 (''Rule 405'') under the Securities Act of 1933;[2] and 17 CFR 12b–2 (''Rule 12b–2''), 17 CFR 249.220f (''Form 20–F''), 17 CFR 249.240f (''Form 40–F''), and 17 CFR 249.310 (''Form 10–K'') under the Securities Exchange Act of 1934 (''Exchange Act'').[3]

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[1] 15 U.S.C. 229.10 through 229.1305.

[2] 15 U.S.C. 77a *et seq.*

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I. Introduction

On May 9, 2019, we proposed amendments [4] to the ''accelerated filer'' and ''large accelerated filer'' definitions in Rule 12b–2.[5] We proposed these amendments to promote capital formation for certain smaller issuers while maintaining investor protections by more appropriately tailoring the types of issuers that are included in the categories of accelerated and large accelerated filers and revising the transition thresholds for accelerated and large accelerated filers. Specifically, we proposed to exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company (''SRC'') [6] and that has annual revenue of less than $100 million in the most recent fiscal year for which audited financial statements are available (''SRC revenue test''), with the effect that such an issuer would not need to satisfy the requirements applicable to an accelerated or large accelerated filer. We also proposed to increase the public float transition threshold for accelerated and large accelerated filers to become a non-accelerated filer from $50 million to $60 million, and to increase the exit threshold in the large accelerated filer transition provision from $500 million to $560 million in public float. Finally, we proposed to add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

We received over 60 comment letters on the proposal, including over 40 unique letters and approximately 20 letters that were substantially similar. Many of the commenters generally supported the proposed amendments [7] while other commenters generally opposed them or suggested the need for further empirical study.[8] In addition, the SEC's Small Business Capital Formation Advisory Committee (''SBCFAC'') adopted a recommendation supporting the proposed amendments,[9] and the 2019 SEC Government-Business Forum on Small Business Capital Formation (''SEC Small Business Forum'') provided a recommendation on the accelerated filer definition.[10] After taking into consideration these recommendations and the public comments, we are adopting the amendments substantially as proposed. The final amendments are consistent with our historical practice of providing scaled disclosure and other accommodations for smaller issuers and with recent actions by Congress to reduce unnecessary burdens on new and smaller issuers.[11]

II. Discussion of the Final Amendments

A. Background

In June 2018, the Commission adopted amendments [12] to the SRC

[4] *Amendments to the Accelerated and Large Accelerated Filer Definitions,* Release No. 34–85814 (May 9, 2019) [84 FR 24876 (May 29, 2019)] (''Proposing Release'').

[5] Although Rule 12b–2 defines the terms ''accelerated filer'' and ''large accelerated filer,'' it does not define the term ''non-accelerated filer.'' If an issuer does not meet the definition of accelerated filer or large accelerated filer, it is considered a non-accelerated filer.

[6] *See* Item 10(f), Rule 405, and Rule 12b–2 (defining SRC).

[7] *See, e.g.,* letters from Adamas Pharmaceuticals, Inc. (July 19, 2019) (''Adamas''); Advanced Medical Technology Association Accel (July 26, 2019) (''AdvaMed''); Aequor, Inc. (July 18, 2019) (''Aequor''); Ardelyx, Inc. (July 18, 2019) (''Ardelyx''); American Securities Association (July 29, 2019) (''ASA''); Biotechnology Innovation Organization (July 29, 2019) (''BIO''); Broadmark Capital (July 29, 2019) (''Broadmark''); California Life Sciences Association (Jun. 10, 2019) (''CLSA''); Catalyst Biosciences, Inc. (July 29, 2019) (''Catalyst''); Cerecor Inc. (July 3, 2019) (''Cerecor''); Chiasma, Inc. (July 11, 2019) (''Chiasma''); Coalition of Four Small Businesses and their Investors (July 24, 2019) (''AdvaMed *et al.*''); Concert Pharmaceuticals, Inc. (July 1, 2019) (''Concert''); Corvus Pharmaceuticals, Inc. (July 19, 2019) (''Corvus''); Council of State Bioscience Associations (July 25, 2019) (''CSBA''); CSB Bancorp, Inc. (July 26, 2019) (''CSB''); CymaBay Therapeutics, Inc. (July 24, 2019) (''CymaBay''); Daré Bioscience, Inc. (July 10, 2019) (''Daré''); Darian B. Andersen, General Counsel, PC (Jun. 5, 2019) (''Andersen''); Equillium, Inc. (July 22, 2019) (''Equillium''); Evoke Pharma, Inc. (July 17, 2019) (''Evoke''); Gritstone Oncology Inc. (July 24, 2019) (''Gritstone''); Guaranty Federal Bancshares, Inc. (July 23, 2019) (''Guaranty''); Independent Community Bankers of America (July 24, 2019) (''ICBA''); Kezar Life Sciences, Inc. (July 17, 2019) (''Kezar''); Kyle Carver (May 25, 2019) (''Carver''); Marinus Pharmaceuticals, Inc. (July 17, 2019) (''Marinus''); Millendo Therapeutics, Inc. (July 29, 2019) (''Millendo''); MSB Financial Corp. (July 19, 2019) (''MSB''); Nasdaq, Inc. (July 29, 2019) (''Nasdaq''); Organovo, Inc. (July 18, 2019) (''Organovo''); Pieris Pharmaceuticals, Inc. (July 11, 2019) (''Pieris''); Revance Therapeutics, Inc. (July 22, 2019) (''Revance''); SI–BONE, Inc. (July 19, 2019) (''SI–BONE''); South Carolina Bankers Association (July 26, 2019) (''SCBA''); Summit State Bank (May 28, 2019) (''Summit''); Sutro Biopharma, Inc. (July 8, 2019) (''Sutro''); Syros Pharmaceuticals, Inc. (July 22, 2019) (''Syros''); Teligent, Inc. (July 23, 2019) (''Teligent''); Terra Tech Corp. (May 29, 2019) (''Terra Tech''); The Bank of South Carolina (July 26, 2019) (''BSC''); U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (July 29, 2019) (''Chamber''); Xenon Pharmaceuticals Inc. (Jun. 19, 2019) (''Xenon''); and Zynerba Pharmaceuticals, Inc. (July 8, 2019) (''Zynerba'').

[8] *See, e.g.,* letters from BDO USA, LLP (July 29, 2019) (''BDO''); Better Markets, Inc. (July 29, 2019) (''Better Markets''); Center for Audit Quality (July 29, 2019) (''CAQ''); CFA Institute, in consultation with its Corporate Disclosure Policy Council (Aug. 22, 2019) (''CFA Inst.''); Colleen Honigsberg, Associate Professor of Law, Stanford Law School, *et al.* (July 22, 2019) (''Prof. Honigsberg *et al.*''); Consumer Federation of America (July 29, 2019) (''CFA''); Council of Institutional Investors (July 25, 2019) (''CII''); Crowe LLP (July 29, 2019) (''Crowe''); Deloitte & Touche LLP (July 26, 2019) (''Deloitte''); Grant Thornton LLP (July 17, 2019) (''Grant Thornton''); John Hassell, Indiana University (May 19, 2019) (''Prof. Hassell''); Mary Barth, Stanford University, Wayne Landsman, University of North Carolina, Joseph Schroeder, Indiana University, and Daniel Taylor, University of Pennsylvania (July 11, 2019) (''Prof. Barth *et al.*''); RSM US LLP (July 29, 2019) (''RSM''); and Weili Ge, University of Washington; Allison Koester, Georgetown University; and Sarah McVay, University of Washington (July 26, 2019) (''Prof. Ge *et al.*'').

[9] *See* U.S. Sec. and Exch. Comm'n Small Bus. Capital Formation Advisory Comm., *Recommendation on the Commission's Proposal to Amend the Accelerated and Large Accelerated Filer Definitions* (Aug. 23, 2019) (''SBCFAC Recommendations''), available at *https://www.sec.gov/spotlight/sbcfac/recommendations-rule-3-05-and-accelerated-filer-definition.pdf.* Although it supported the proposed amendments, the SBCFAC stated that it ''would welcome the Commission to explore additional further amendments'' to the accelerated and large accelerated filer definitions and recommended exploring raising the revenue threshold to be a non-accelerated filer to one higher than $100 million, basing the revenue test for an issuer to qualify as a non-accelerated filer on a three-year rolling average instead of basing it on the revenue in the most recent fiscal year, and looking at whether all SRCs should be non-accelerated filers.

[10] *See* U.S. Sec. and Exch. Comm'n Gov't-Bus. Forum on Small Bus. Capital Formation, *Report on the 38th Annual Government-Business Forum on Small Business Capital Formation* (Aug. 14, 2019) (''SEC Small Business Forum''), available at *https://www.sec.gov/files/small-business-forum-report-2019.pdf. The SEC Small Business Forum* recommended aligning the definition of non-accelerated filer with the definition of SRC to include issuers with a public float less than $250 million or with annual revenues less than $100 million (and either no public float or a public float less than $700 million).

[11] For example, Title I of the Jumpstart Our Business Startups Act of 2012 (''JOBS Act'') amended Section 404(b) of the Sarbanes-Oxley Act (''SOX''), 15 U.S.C. 7262(b), which relates to an issuer's ICFR to exempt emerging growth companies (''EGCs'') from the requirement of SOX Section 404(b). In particular, SOX Section 404(b) requires that an issuer's independent auditor attest to, and report on, management's assessment of the effectiveness of the issuer's ICFR (''ICFR auditor attestation''). *See* Public Law 112–106, Sec. 103, 126 Stat. 306 (2012). In addition, Section 72002 of the Fixing America's Surface Transportation Act of 2015 requires the Commission to revise Regulation S–K to further scale or eliminate requirements to reduce the burden on EGCs, accelerated filers, SRCs, and other smaller issuers, while still providing all material information to investors. *See* Public Law 114–94, 129 Stat. 1312 (2015).

[12] *See Smaller Reporting Company Definition,* Release No. 33–10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)] (''SRC Adopting Release'').

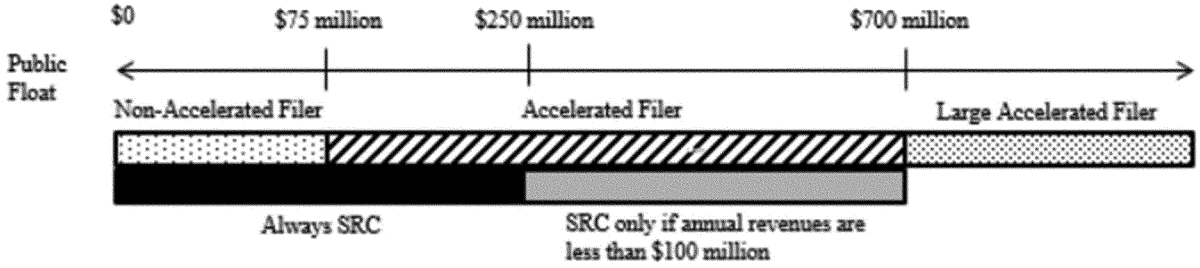
definition [13] to expand the number of issuers that qualify for scaled disclosure accommodations. The amended SRC definition allows an issuer to use either a public float [14] test or the SRC revenue test to determine whether it is an SRC. The amendments increased the threshold in the public float test for an issuer to initially qualify as an SRC from less than $75 million to less than $250 million.[15] The Commission also expanded the revenue test to include issuers with annual revenues [16] of less than $100 million if they have no public float or a public float of less than $700 million.[17] The Commission intended the amendments to promote capital formation for smaller issuers by reducing compliance costs for the newly eligible SRCs while maintaining appropriate investor protections.[18]

In conjunction with these amendments, the Commission also revised the accelerated filer and large accelerated filer definitions in Rule 12b–2 to remove the condition that, for an issuer to be an accelerated filer or a large accelerated filer, it must not be eligible to use the SRC accommodations.[19] One result of these amendments is that some issuers now are categorized as both SRCs and accelerated or large accelerated filers.[20] These issuers have some, but not all, of the benefits of scaled regulation. In particular, issuers that are categorized as both SRCs and accelerated or large accelerated filers must comply with the earlier filing deadlines required of accelerated and large accelerated filers for annual and quarterly reports and the requirement of SOX Section 404(b).[21]

Prior to the SRC amendments, the SRC category of filers generally did not overlap with either the accelerated or large accelerated filer categories.[22] Now, however, as illustrated in Figure 1 of this section, because the public float tests in the SRC and accelerated filer definitions partially overlap, and the accelerated and large accelerated filer definitions no longer specifically exclude an issuer that is eligible to be an SRC, an issuer meeting the accelerated filer definition will be both an SRC and an accelerated filer [23] if it has:

- A public float of $75 million or more, but less than $250 million, regardless of annual revenues; or
- Less than $100 million in annual revenues, and a public float of $250 million or more, but less than $700 million.

Figure 1. Current Definitions of SRC, Accelerated Filer, and Large Accelerated Filer



B. Amendments To Exclude Low-Revenue SRCs From the Accelerated and Large Accelerated Filer Definitions

1. Proposed Amendments

Under the existing accelerated filer and large accelerated filer definitions in Rule 12b–2, an issuer must satisfy three conditions to be an accelerated filer or large accelerated filer.[24] We proposed to

[13] *See* note 6 above.

[14] Public float is defined in paragraph (3)(i)(A) of the SRC definition in Rule 12b–2, which states that public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity. *See also* Item 10(f) (2)(i)(A) and Rule 405. An entity with no public float because, for example, it has equity securities outstanding but is not trading in any public trading market would not be able to qualify on the basis of a public float test alone. That entity must look to the SRC revenue test to determine whether it qualifies as an SRC.

[15] To avoid situations where an issuer frequently enters and exits SRC status, each test includes two thresholds—one for initially determining whether an issuer qualifies as an SRC and a subsequent transition threshold that is lower for issuers that did not initially qualify as an SRC, or that no longer qualify as an SRC because they exceeded the initial thresholds.

[16] Annual revenues are measured as of the most recently completed fiscal year for which audited financial statements are available. *See* Item 10(f)(2)(i)(B), Rule 405, and Rule 12b–2.

[17] *See* Item 10(f)(1), Rule 405, and Rule 12b–2. The prior revenue test included issuers with no public float and annual revenues of less than $50 million. *See* SRC Adopting Release, note 12 above, at 31995. The lower transition thresholds under the revenue test for an issuer that did not initially qualify as an SRC, or that no longer qualifies as an SRC because it exceeded the initial thresholds, were revised from less than $40 million of annual revenues and no public float to less than $80 million of annual revenues and either no public float or a public float of less than $560 million. *See* Item 10(f)(2)(iii)(B), Rule 405, and Rule 12b–2.

[18] SRC Adopting Release, note 12 above, at 31992.

[19] This amendment, among other things, preserved the existing thresholds in those definitions and did not change the number of issuers subject to the ICFR auditor attestation requirement.

[20] Although rare, under our existing rules, some issuers that meet the large accelerated filer definition may be eligible to be an SRC because of the expanded revenue test in the SRC definition.

See Proposing Release, note 4 above, at 24877, n. 25. As discussed below, in Section II.B.3., we are adopting the proposed amendment to the ''large accelerated filer'' definition so that an issuer that is eligible to be an SRC under the SRC revenue test would not also qualify as a large accelerated filer.

[21] 15 U.S.C. 7262(b).

[22] *See* SRC Adopting Release, note 12 above, at 32001.

[23] The thresholds provided below are based on the initial thresholds of each definition; however, due to the transition provisions of the accelerated and large accelerated filer definitions, additional issuers may also be both an SRC and an accelerated or large accelerated filer.

[24] The three existing conditions for qualifying as an accelerated filer are that an issuer: (1) Had an aggregate worldwide public float of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter; (2) has been subject to the requirements of 15 U.S.C. 78m (Exchange Act Section 13(a)) or 15 U.S.C. 78o(d) (Exchange Act Section 15(d)) for a period of at least twelve calendar months; and (3) has filed at least

add a new condition to the definitions of accelerated filer and large accelerated filer that would exclude from those definitions an issuer that is eligible to be an SRC and that meets the SRC revenue test. The most notable effect of the proposed amendments [25] would be that an issuer that is eligible to be an SRC and that meets the SRC revenue test would not be subject to the requirement of SOX Section 404(b) that an issuer's independent auditor must attest to, and report on, management's assessment of the effectiveness of the issuer's ICFR.[26] The final amendments do not change an auditor's role in a financial statement audit.[27]

SOX Section 404(a) [28] requires almost all issuers, including SRCs, that file reports pursuant to Exchange Act Section 13(a) or 15(d) [29] to establish and maintain ICFR and have their management assess the effectiveness of their ICFR.[30] SOX Section 404(b) subjects certain issuers not otherwise exempted to the ICFR auditor attestation requirement.[31] The most significant exemption from the ICFR auditor attestation requirement is the exemption provided to EGCs pursuant to Title I of the JOBS Act (''JOBS Act Exemption''). Generally, an EGC is a company that has total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year end and that has not sold common equity securities under a registration statement.[32] The JOBS Act Exemption provides EGCs with a five-year exemption from the ICFR auditor attestation requirement. We estimate that the JOBS Act Exemption applies to issuers with an aggregate market capitalization of about $585 billion, compared to about $95 billion in aggregate for the issuers that are newly exempt from the ICFR auditor attestation requirement under the amendments.[33]

2. Comments on the Proposed Amendments

Many commenters supported the portion of the proposed amendments that would exclude an issuer that is eligible to be an SRC and that meets the SRC revenue test from the accelerated and large accelerated filer definitions.[34] Other commenters opposed the proposed amendments or suggested the need for further analysis.[35] Commenters' views on different aspects of the proposal, as well as its effects, are discussed topically, below.

a. Comments on Using Revenue for Determining Accelerated and Large Accelerated Filer Status

A number of commenters stated explicitly that they supported using revenue as a measure to determine whether an issuer should be subject to the ICFR auditor attestation requirement.[36] These commenters suggested that using a revenue measurement is preferable to using a public float measurement [37] because public float is often affected by industry or economic trends not specific to any particular issuer,[38] and that revenue is more predictable,[39] a better indicator of an issuer's complexity,[40] and a better indicator of an issuer's ability to absorb the burdens of the ICFR auditor attestation requirement.[41] Other commenters questioned whether revenue is an appropriate measure for determining whether an issuer should be a non-accelerated filer in all cases.[42] One commenter asserted that low-revenue companies may have less sophisticated or experienced accounting functions and some aspects of their business may be associated with accounting complexities.[43] This commenter also suggested that issuers may recognize revenue in ways that could result in them frequently transitioning in and out of non-accelerated filer status.[44] Another commenter indicated that an issuer could have a relatively low amount of revenue but still have a large market capitalization and thus ''greater investor exposure.'' [45]

b. Comments on the Proposed Amendments' Effect on Capital Formation and the Number of Public Issuers

Commenters expressed mixed views on the effect that the proposed amendments would have on capital formation, the cost of capital, and the decisions of companies as to whether to enter the public capital markets. Some commenters agreed with the view expressed in the Proposing Release that, by expanding the JOBS Act Exemption, the proposed amendments would enhance capital formation or allow affected issuers to preserve capital [46] while also maintaining investor

one annual report pursuant to those sections. For a large accelerated filer, conditions (2) and (3) are the same, but condition (1) is that an issuer had an aggregate worldwide public float of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter. Also, as discussed in note 20 above, some issuers that meet the ''large accelerated filer'' definition may be eligible to be an SRC.

[25] The issuer also would not have to abide by the filing deadlines of an accelerated or large accelerated filer, provide the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on its periodic and/or current reports, or provide the disclosure required by Item 101(e)(4) of Regulation S–K about whether it makes filings available on or through its internet website. *See* 17 CFR 229.101(e)(4).

[26] *See* 17 CFR 240.13a–15(f) and 17 CFR 240.15d–15(f) (defining ICFR).

[27] *See* letter from Deloitte (suggesting that the Commission explain how an auditor's role in a financial statement audit will change as a result of the amendments).

[28] 15 U.S.C. 7262(a).

[29] *See* 17 CFR 240.13a–15 and 17 CFR 240.15d–15.

[30] Investment companies registered under Section 8 of the Investment Company Act of 1940, 15 U.S.C 80a–8, are specifically exempted from SOX Section 404 by SOX Section 405, 15 U.S.C. 7263. Notwithstanding the exemption pursuant to SOX Section 405, these registered investment companies are subject to other requirements regarding internal controls. *See* Proposing Release, note 4 above, at 24879, n. 44.

[31] For example, SOX Section 404(c) exempts from Section 404(b) any issuer that is neither a large accelerated filer nor an accelerated filer. *See* 15 U.S.C. 7262(c).

[32] *See* 15 U.S.C. 77(b)(a)(19).

[33] These estimates are based on staff analysis of data on market values from Compustat for annual reports in calendar year 2018. *See* note 298 below for details on the identification of the population of different filer types. *See* note 336 below for details on the identification of the population of affected issuers. Out of the 1,430 issuers who qualified as EGCs in 2018, 1,097 are also non-accelerated filers. The remaining EGCs are still exempt from the ICFR auditor attestation requirement solely due to the JOBS Act Exemption, and those issuers are significantly larger in terms of aggregate market capitalization (approximately $145 billion) than the issuers newly exempted under the amendments (approximately $95 billion). This estimate excludes 41 EGCs with an aggregate of approximately $20 billion in market capitalization for which we are unable to determine non-accelerated filer status, the majority of which are Canadian issuers filing on Form 40–F.

[34] *See, e.g.,* letters from Adamas, AdvaMed, AdvaMed *et al.,* Aequor, Andersen, Ardelyx, Ardelyx's slides from its presentation to the SBCFAC Meeting (Aug. 13, 2019) (''Ardelyx Presentation''), ASA, BIO, Broadmark, BSC, Carver, Catalyst, Cerecor, Chamber, Chiasma, CLSA, Concert, Corvus, CSB, CSBA, CymaBay, Daré, Equillium, Evoke, Gritstone, Guaranty, ICBA, Institute of Management Accountants' Financial Reporting and Small Business Committees (July 16, 2019) (''IMA''), Kezar, Marinus, Millendo, MSB, National Association of Manufacturers (July 26, 2019) (''NAM''), Nasdaq, Organovo, Pieris, Revance, SCBA, SI–BONE, Summit, Sutro, Syros, Teligent, Terra Tech, Xenon, and Zynerba.

[35] *See, e.g.,* letters from BDO, Better Markets, CAQ, CFA, CFA Inst., CII, Crowe, Deloitte, Grant Thornton, Prof. Barth *et al.,* Prof. Ge *et al.,* Prof. Hassell, Prof. Honigsberg *et al.,* and RSM.

[36] *See, e.g.,* letters from BIO, Broadmark, Chamber, Concert, Corvus, and MSB.

[37] *See, e.g.,* letters from Broadmark, Chamber, Concert, Corvus, and MSB.

[38] *See* letter from MSB.

[39] *See* letter from Broadmark.

[40] *See, e.g.,* letters from Concert and Corvus.

[41] *See* letter from Broadmark.

[42] *See* letter from Ernst & Young LLP (July 29, 2019) (''EY''), Grant Thornton, and National Association of State Boards of Accountancy (July 23, 2019) (''NASBA'').

[43] *See* letter from EY.

[44] *Id.*

[45] *See* letter from Grant Thornton.

[46] *See, e.g.,* letters from Andersen, CLSA, Concert, ICBA, and NASBA.

protection.[47] One commenter, questioning the benefits, if any, of the ICFR auditor attestation requirement, asserted that there is no correlation between a smaller issuer's compliance with the ICFR auditor attestation requirement and stronger markets in general.[48] Additionally, some commenters suggested that eliminating the ICFR auditor attestation requirement would encourage certain companies to enter the public markets.[49]

Conversely, other commenters asserted that the proposed amendments would not enhance capital formation, and some indicated they could even reduce capital formation.[50] Two of these commenters expressed the view that eliminating the ICFR auditor attestation requirement could increase the cost of capital for certain issuers because investors would require a premium to invest in issuers due to the heightened risk of ineffective internal controls.[51] In addition, some commenters maintained that the ICFR auditor attestation requirement does not prevent companies from entering the public markets.[52] For example, one commenter suggested that the Proposing Release's statement about the significant decline in the number of issuers listed on major exchanges implied that the cost of compliance with the ICFR auditor attestation requirement has contributed materially to that decline.[53] This commenter and some others asserted that the decline can be attributed to many other factors.[54] Some commenters stated that confidence in the U.S. capital market system, likely stems, at least in part, from financial reporting safeguards, including the ICFR auditor attestation requirement, and contended that the proposed amendments would thereby reduce investor confidence in issuers' financial reporting.[55]

Several commenters indicated that the ICFR auditor attestation requirement is not necessary because issuers are permitted to voluntarily obtain an ICFR auditor attestation if they believe it is in their interest to do so.[56] Some instances in which commenters suggested that issuers may choose to voluntarily obtain an ICFR auditor attestation include when their investors demand it,[57] when not obtaining it would have a negative impact on investment analysts' coverage,[58] or when issuers otherwise deem it a good use of their capital resources.[59] In this regard, one commenter suggested clarifying that it is the authority and responsibility of the issuer's audit committee to determine whether the issuer should voluntarily obtain an ICFR auditor attestation.[60]

c. Comments on the Proposed Amendments' Effect on Investor Protection

Commenters' views as to the effect of the proposed amendments on investor protection were also mixed. Many commenters asserted that, even if the ICFR auditor attestation requirement did not apply, other existing requirements would provide investors in these issuers with sufficient protection.[61] Commenters cited a number of these other requirements, including SOX Section 404(a);[62] Nasdaq's listing standards, surveillance, and enforcement;[63] the required management certifications;[64] and the obligation of an independent auditor to consider ICFR when conducting a financial statement audit.[65]

For example, several commenters noted that, when conducting a financial statement audit, the auditor is required to obtain an understanding of each component of ICFR,[66] which a few of these commenters asserted would provide investors with sufficient protection absent the ICFR auditor attestation requirement.[67] Other commenters noted that the requirement that an auditor communicate to the issuer's management and its audit committee any significant deficiencies or material weaknesses related to ICFR in a financial statement audit would provide a certain level of protection for investors in the affected issuers.[68] Some commenters expressed a view that the ICFR auditor attestation requirement is not important or material to investors generally.[69] A few of these commenters asserted that investors rarely ask an issuer that is exempt from the ICFR auditor attestation requirement to voluntarily obtain such an attestation.[70] One commenter[71] cited a study[72] that found no statistically significant market response on average to disclosures of material weaknesses in disclosure controls, which suggests, according to the commenter, that investors do not significantly change their long-term value assessment of an issuer based on these disclosures.

In addition to these broader points, several commenters in the banking sector pointed out that community banks and bank holding companies are subject to extensive supervision and regulation by federal and state banking regulators, which they stated would protect investors in this industry even if the affected issuers were not subject to the ICFR auditor attestation requirement.[73]

Conversely, other commenters asserted that the ICFR auditor attestation requirement is an important investor protection and that eliminating it would undermine such protection.[74]

[47] *See, e.g.,* letters from ICBA and NASBA.

[48] *See* letter from BIO.

[49] *See, e.g.,* letters from AdvaMed, AdvaMed *et al.,* Broadmark, Cerecor, and ICBA.

[50] *See, e.g.,* letters from Better Markets, CII, CFA, CFA Inst., and Prof. Ge *et al.*

[51] *See* letters from Better Markets and CFA.

[52] *See, e.g.,* letters from CFA, CFA Inst., CII, and Crowe.

[53] *See* letter from CFA.

[54] *See, e.g.,* letters from CII, CFA, CFA Inst., and Crowe. Other factors commenters cited include the expansion of exemptions to registration that increase companies' ability to raise funds privately, *see, e.g.,* letters from CFA, CII, and Crowe; corporate consolidations, *see, e.g.,* letters from CFA and CII; market conditions, *see* letter from CFA; and the general regulatory environment, *see* letter from Crowe.

[55] *See, e.g.,* letters from CAQ and CII.

[56] *See, e.g.,* letters from ASA, BIO, Broadmark, Chamber, Guaranty, and Nasdaq.

[57] *See, e.g.,* letters from BIO and Guaranty.

[58] *See* letter from Guaranty.

[59] *Id.*

[60] *See* letter from EY.

[61] *See, e.g.,* letters from ASA, Broadmark, BSC, Carver, Cerecor, Guaranty, ICBA, MSB, NAM, Nasdaq, Pieris, SCBA, and Xenon.

[62] *See, e.g.,* letters from ASA, Broadmark, Carver, ICBA, MSB, Nasdaq, and Xenon.

[63] *See* letter from Nasdaq.

[64] *See* 17 CFR 229.601(31)(i), 17 CFR 240.13a–14(a), and 17 CFR 240.15d–14(a). *See, e.g.,* letters from MSB, Nasdaq, and Xenon.

[65] *See, e.g.,* letters from ASA, Carver, Cerecor, MSB, NAM, and Xenon.

[66] *See, e.g.,* letters from ASA, CAQ, CFA Inst., Crowe, EY, Grant Thornton, Guaranty, NASBA, Nasdaq, PricewaterhouseCoopers LLP (July 25, 2019) (''PWC''), and RSM.

[67] *See, e.g.,* letters from ASA, Guaranty, and Nasdaq.

[68] *See* letter from Nasdaq.

[69] *See, e.g.,* letters from Adamas; Ardelyx; Ardelyx Presentation, ASA, BIO, Carver, Catalyst, Chiasma, Corvus, CymaBay, Equillium, Evoke, Gritstone, Kezar, Marinus, Millendo, Organovo, Pieris, Revance, SI–BONE, Syros, Teligent, and Zynerba. Some of these commenters and others asserted that the ICFR auditor attestation requirement is not material for, or important to, investors based on the results of a study and their own experience. *See, e.g.,* letters from Adamas, Ardelyx, Catalyst, Chiasma, Corvus, CymaBay, Equillium, Evoke, Gritstone, Kezar, Marinus, Millendo, Organovo, Pieris, Revance, SI–BONE, Syros, Teligent, and Zynerba (citing Craig Lewis and Joshua White, *Science or Compliance: Will Section 404(b) Compliance impede Innovation by Emerging Growth Companies in the Biotech Industry,* (Feb. 2019) (''BIO Study''), available at *https://www.bio.org/sites/default/files/BIO_EGC_White_Paper_02_11_2019_FINAL.pdf*).

[70] *See, e.g.,* letters from Ardelyx Presentation and BIO.

[71] *See* letter from BIO.

[72] Jacqueline Hammersley, Linda Myers, and Catherina Shakespeare, *Market Reactions to the Disclosure of Internal Control Weaknesses and to the Characteristics of those Weaknesses under Section 302 of the Sarbanes Oxley Act of 2002* (Mar. 2008), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=979538*.

[73] *See, e.g.,* letters from BSC, Guaranty, ICBA, and SCBA.

[74] *See, e.g.,* letters from Better Markets, Grant Thornton, and Prof. Barth *et al.*

One commenter disputed the contention in the Proposing Release that eliminating the ICFR auditor attestation requirement for low-revenue issuers would not significantly affect the ability of investors to make informed investment decisions.[75] Some commenters stated that the ICFR auditor attestation requirement increases investor confidence generally [76] and that investors view the requirement as beneficial.[77]

Some commenters asserted that the SOX Section 404(a) requirement would not provide investors in low-revenue SRCs with sufficient protection if they were not also subject to the ICFR auditor attestation requirement [78] because, as one commenter stated, the ICFR auditor attestation requirement acts as an effective check on SOX Section 404(a).[79] Another commenter asserted that management's assessment is weakened when management knows that it will not be challenged by an ICFR auditor attestation.[80] A third commenter claimed that investors would place undue reliance on management's report when not accompanied by an ICFR auditor attestation.[81]

A few commenters noted that a financial statement audit does not provide the same level of assurance as an integrated audit [82] because a financial statement audit's objective is different from that of an integrated audit as it relates to ICFR.[83] Therefore, some commenters asserted that, without the ICFR auditor attestation requirement, the requirement for auditors to obtain an understanding of each component of ICFR when conducting a financial statement audit would not provide sufficient investor protection.[84] Similarly, other commenters suggested that some testing of ICFR conducted as part of a financial statement audit would not provide sufficient investor protection.[85] One commenter asserted that the control testing performed by a financial statement auditor would not be as extensive as testing performed in an ICFR auditor attestation and that it is more difficult for a financial statement auditor to challenge the design of ICFR.[86] Another commenter noted that, despite the requirement that a financial statement auditor communicate any significant deficiencies or material weaknesses related to ICFR to the issuer's management and its audit committee, a financial statement audit is not designed to identify such significant deficiencies or material weaknesses.[87]

Some commenters indicated that the ICFR auditor attestation requirement promotes effective ICFR and more accurate disclosures related to ICFR,[88] including the likelihood and timeliness of disclosing ineffective ICFR.[89] Also, a number of commenters noted that, as discussed in the Proposing Release, effective ICFR, generally, and the ICFR auditor attestation requirement, more specifically, enhances transparency; [90] increases the quality and reliability of issuers' financial statements,[91] corporate governance,[92] audits,[93] and analyst forecasts; [94] and reduces the number of issuers' restatements, misstatements,[95] the instances of fraud,[96] and occurrences of insider trading.[97]

A few commenters expressed concern about the effect that the amendments could have on the reliability of key performance indicators and other measures. One commenter indicated that investors in certain issuers that would become non-accelerated filers under the amendments rely on key performance indicators that are derived from their financial statements, such as backlog, sales orders, and number of customers, and asserted that eliminating the ICFR auditor attestation requirement could reduce the reliability of those indicators.[98] Another commenter noted that investors in those issuers rely on non-GAAP financial measures, key performance indicators, and other disclosures and stated that the Commission may wish to consider auditor involvement with that information to address potential risks related to completeness and accuracy.[99]

d. Comments on the Disproportionate Costs and Benefits of the ICFR Auditor Attestation Requirement to Small and Low-Revenue Companies

A number of commenters stated that the ICFR auditor attestation requirement is quite costly.[100] One of these commenters indicated that the ICFR auditor attestation requirement ''is the most costly aspect of being an [a]ccelerated [f]iler.'' [101] Several commenters asserted more specifically that the ICFR auditor attestation requirement is disproportionally costly to small and/or low-revenue issuers.[102] Some of these commenters indicated that the reason for the disproportionate costs is that there are fixed costs associated with the ICFR auditor attestation requirement that are not scalable for smaller issuers.[103] Other commenters stated that the benefits of the ICFR auditor attestation requirement do not outweigh the costs,[104] including the costs associated with ICFR auditor attestation fees,[105] issuer personnel time,[106] and outside consultants.[107]

Some commenters asserted that eliminating the ICFR auditor attestation requirement would not substantially reduce costs to issuers.[108] A few of these commenters noted that ICFR auditor attestations have become less expensive and more effective because auditors are more experienced in conducting them.[109] Some commenters stated that potential compliance cost reductions may be negated if there is a loss of investor confidence and protection,[110] if ICFR deficiencies go undetected,[111] if there is an increase in restatements and misstatements,[112] or if there are higher

[75] *See* letter from Prof. Barth *et al.*

[76] *See, e.g.,* letters from Better Markets, CAQ, CFA Inst., and EY.

[77] *See, e.g.,* letters from CII, CFA Inst., and EY.

[78] *See, e.g.,* letters from Better Markets, CFA Inst., Crowe, Grant Thornton, and Prof. Barth *et al.*

[79] *See* letter from Better Markets.

[80] *See* letter from CFA Inst.

[81] *See* letter from Grant Thornton.

[82] *See, e.g.,* letters from CFA Inst., Crowe, and EY.

[83] *See, e.g.,* letters from CAQ, CFA Inst., and RSM (noting that a financial statement audit's objective is for the auditor to obtain an understanding of the issuer's ICFR that is sufficient to assess the factors that affect the risks of material misstatement and to design further audit procedures, whereas an integrated audit's objective is to test and express an opinion on the effectiveness of the issuer's ICFR).

[84] *See, e.g.,* letters from CAQ, CFA Inst. Crowe, EY, and RSM.

[85] *See, e.g.,* letters from EY, Grant Thornton, and NASBA.

[86] *See* letter from EY.

[87] *Id.*

[88] *See, e.g.,* letters from Better Markets, CFA, CII, Crowe, Grant Thornton, Prof. Barth *et al.,* and PWC.

[89] *See, e.g.,* letters from Better Markets, CFA, Crowe, and Prof. Barth *et al.*

[90] *See* letter from EY.

[91] *See, e.g.,* letters from Better Markets, CAQ, CFA, CII, Deloitte, EY, Grant Thornton, Prof. Barth *et al.,* PWC, and RSM.

[92] *See* letter from Deloitte.

[93] *See* letter from CAQ.

[94] *See* letter from CFA.

[95] *See, e.g.,* letters from CAQ, CFA, CFA Inst., Crowe, Deloitte, EY, Grant Thornton, and Prof. Barth *et al.*

[96] *See, e.g.,* letters from Better Markets and Deloitte.

[97] *See* letter from CFA.

[98] *See* letter from NASBA.

[99] *See* letter from CAQ.

[100] *See, e.g.,* letters from BIO, Broadmark, Carver, Guaranty, ICBA, MSB, Summit, and Syros.

[101] Letter from Guaranty.

[102] *See, e.g.,* letters from AdvaMed *et al.,* Andersen, BIO, Broadmark, Chamber, CLSA, CSB, Guaranty, and NAM.

[103] *See, e.g.,* letters from Broadmark and Guaranty.

[104] *See, e.g.,* letters from ICBA, MSB, and Syros.

[105] *See, e.g.,* letters from MSB and Summit.

[106] *See, e.g.,* letters from Carver, MSB, and Summit.

[107] *See, e.g.,* letters from MSB and Summit.

[108] *See, e.g.,* letters from BDO, Better Markets, CFA, CFA Inst., EY, Grant Thornton, and RSM.

[109] *See, e.g.,* letters from CFA Inst. and Deloitte.

[110] *See, e.g.,* letters from Better Markets and CII.

[111] *See* letter from CFA Inst.

[112] *See, e.g.,* letters from BDO, CFA, and CFA Inst.

costs of capital.[113] Additionally, some commenters stated that any cost reductions would vary widely among issuers[114] and would be hard to quantify.[115]

Other commenters asserted that the benefits of the ICFR auditor attestation requirement are not as great for low-revenue and smaller issuers as they are for other issuers.[116] These commenters expressed the view that the issuers that would be exempt from the ICFR auditor attestation requirement under the proposed amendments are less likely to have ineffective ICFR than other issuers. One commenter cited a study that concluded that biotech EGCs are less likely to have ineffective ICFR than other issuers.[117] Another commenter noted that ineffective ICFR is less of a concern for banking issuers because of the ''federal and state regulatory oversight and internal control audits of community banks.''[118]

Conversely, a number of other commenters contended that the benefits of the ICFR auditor attestation requirement are greater for low-revenue and smaller issuers than for other issuers.[119] Some of the commenters discussed how those issuers are more likely to have ineffective ICFR.[120] Commissioner Robert J. Jackson Jr.'s dissent from the Proposing Release (''Commissioner Jackson's Statement'')[121] asserted that investors care most about ICFR auditor attestations at those issuers that would not be subject to the ICFR auditor attestation requirement under the proposed amendments, and that high-growth companies, which potentially would include some of the affected issuers, are those in which the risk and consequences of fraud are the greatest.[122] Some commenters referred to statistics cited in the Proposing Release to argue that issuers not subject to the ICFR auditor attestation requirement have higher levels of ineffective ICFR compared with issuers subject to that requirement.[123] Additionally, commenters observed that some low-revenue issuers or smaller companies may still have complex financial statements that require sophisticated accounting.[124]

Finally, some commenters maintained that the risks of fraud[125] and financial statement restatements or misstatements[126] are greater for the issuers that would not be subject to the ICFR auditor attestation requirement under the proposed amendments than they are for other issuers. Other commenters cited research that concludes that, since 2003, non-accelerated U.S. filers accounted for 62 percent of the total U.S. financial statement restatements.[127] Some commenters contended that issuers that would not be subject to the ICFR auditor attestation requirement under the proposed amendments have fewer resources and personnel,[128] which could result in increased misstatements,[129] unidentified material weaknesses,[130] and ineffective ICFR.[131]

e. Comments on the Relationship Between Non-Accelerated Filers and SRCs

A number of commenters discussed the relationship between the non-accelerated filer and SRC definitions.[132] Some commenters noted the current relationship is incongruent, which results in complexity.[133] Several commenters indicated that the proposed amendments would reduce some of this complexity by more closely aligning the definitions.[134] In contrast, other commenters asserted that the proposed amendments would increase the complexity of determining filer status.[135]

While supporting the proposed amendments, some commenters recommended that the final amendments completely align the SRC and non-accelerated filer definitions.[136] Additionally, one commenter recommended further extending the relief from the ICFR auditor attestation requirement to issuers with a public float that exceeds $700 million if their annual revenues are less than $100 million.[137]

f. Other Comments

We received a variety of other comments on the Proposing Release. Some commenters noted that it is difficult for investors to easily determine whether an issuer's filing includes an ICFR auditor attestation.[138] These commenters suggested requiring issuers to disclose whether they are exempt from the ICFR auditor attestation requirement[139] and/or have voluntarily obtained an ICFR auditor attestation[140] either on a filing's cover page,[141] such as with a check box,[142] or in management's report on ICFR.[143] Two commenters recommended that the Commission engage in a post-implementation review of the impact of the final amendments,[144] with one of these commenters recommending that

[113] *See, e.g.,* letters from CFA and CFA Inst.

[114] *See, e.g.,* letters from EY, Grant Thornton, and PWC.

[115] *See, e.g.,* letters from Grant Thornton, PWC, and RSM.

[116] *See, e.g.,* letters from BIO and Guaranty.

[117] *See* letter from BIO (citing the BIO Study). Note that the BIO Study investigates only the incremental effect of being in the category of biotech EGCs after accounting for the association of ineffective ICFR with the other characteristics of these issuers (such as their size and return on assets). It is unclear from the study whether these issuers have a higher or lower rate of ineffective ICFR on average, when considering all of their characteristics.

[118] *See* letter from Guaranty.

[119] *See, e.g.,* letters from Better Markets, CAQ, CFA, CFA Inst., CII, Crowe, EY, Grant Thornton, IMA, NASBA, Prof. Barth *et al.,* Prof. Hassell, and RSM.

[120] *See, e.g.,* letters from Better Markets, CAQ, CFA, CII, Grant Thornton, IMA, NASBA, Prof. Barth *et al.,* and Prof. Hassell.

[121] Commissioner Robert J. Jackson Jr., *Statement on Proposed Amendments to Sarbanes Oxley 404(b) Accelerated Filer Definition* (May 9, 2019), available at *https://www.sec.gov/news/public-statement/jackson-statement-proposed-amendments-accelerated-filer-definition.* A few commenters cited Commissioner Jackson's Statement. *See, e.g.,* letters from CFA, CFA Inst., and CII.

[122] We address Commissioner Jackson's Statement in the Economic Analysis. *See* Section IV.C.3.c. below.

[123] Commenters cited the statistics in the Proposing Release, note 4 above, that over 40 percent of non-accelerated filers that are not subject to the ICFR auditor attestation requirement have ineffective ICFR, compared to less than approximately nine and five percent of accelerated and large accelerated filers, respectively. As noted in the Proposing Release, note 4 above, over 68 percent of non-accelerated filers have reported two consecutive years of ineffective ICFR and over 38 percent have reported four consecutive years of ineffective ICFR in their annual reports. *See, e.g.,* letters from Better Markets and Grant Thornton.

[124] *See, e.g.,* letters from BDO and RSM.

[125] *See, e.g.,* letters from Better Markets, CFA, CII, and Prof. Barth *et al.*

[126] *See, e.g.,* letters from Better Markets, CAQ, EY, Grant Thornton, IMA, Prof. Barth *et al.,* and RSM.

[127] *See, e.g.,* letters from CAQ and CFA Inst.

[128] *See, e.g.,* letters from CAQ, Crowe, EY, and Grant Thornton.

[129] *See, e.g.,* letter from Crowe.

[130] *See, e.g.,* letter from EY.

[131] *See, e.g.,* letters from CAQ and Grant Thornton.

[132] *See, e.g.,* letters from ASA, BDO, BIO, Broadmark, CFA, CFA Inst., Chamber, EY, Grant Thornton, Guaranty, KPMG LLP (July 29, 2019) (''KPMG''), NAM, Nasdaq, PWC, and RSM.

[133] *See, e.g.,* letters from BDO, BIO, Broadmark, CFA, and Nasdaq.

[134] *See, e.g.,* letters from BIO, Grant Thornton, KPMG, and Nasdaq.

[135] *See, e.g.,* letters from BDO, CFA Inst., EY, PWC, and RSM. *See also* SBCFAC Meeting Transcript (Aug. 13, 2019), available at *https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-081319.pdf.*

[136] *See, e.g.,* letters from ASA, Guaranty, NAM, and Nasdaq.

[137] *See* letter from Corvus.

[138] *See, e.g.,* letters from CAQ, CFA Inst., and Grant Thornton.

[139] *See, e.g.,* letters from CFA Inst., CII, and Grant Thornton.

[140] *See, e.g.,* letters from CFA Inst. and KPMG.

[141] *See, e.g.,* letters from CAQ, CFA Inst., CII, and Grant Thornton.

[142] *See, e.g.,* letters from CAQ and Grant Thornton.

[143] *See* letter from Grant Thornton.

[144] *See* letters from IMA and PWC.

the final amendments require a review of the impact of the changes on the affected registrants five years after adoption of the amendments.[145] Some commenters requested that we allow sufficient time and notice for auditors and issuers to prepare for compliance with the final amendments,[146] whereas other commenters noted that some issuers may be subject to the ICFR auditor attestation requirement for only a short time [147] and requested the Commission adopt final amendments quickly.[148] One commenter asserted that the measurement date for non-accelerated filer status and the timing of the start of the auditor's attestation of ICFR is burdensome to small biotech registrants.[149]

Additionally, although we did not propose amendments to the accelerated and large accelerated filer definitions that would specifically address foreign private issuers (''FPI'') or business development companies (''BDC''), we solicited comment on these points and a few commenters requested we do so.[150] One commenter asserted that there should be no disparity between an FPI that presents its financial statements in accordance with International Financial Reporting Standards (''IFRS'') and a domestic issuer or FPI that presents its financial statements in accordance with U.S. GAAP.[151] The commenter noted that an FPI that presents its financial statements in accordance with IFRS cannot be an SRC, so such an FPI cannot rely on the proposed amendments. Another commenter recommended that the Commission extend the benefits of non-accelerated filer status to BDCs if they have total investment income of less than $80 million in their most recently completed fiscal year for which audited financial statements are available and have either no public float or public float of less than $700 million.[152] The commenter stated that allowing BDCs to qualify as non-accelerated filers under this modified SRC revenue test would reduce regulatory asymmetry between BDCs and operating companies, consistent with recent congressional mandates to allow BDCs to use the same offering rules as operating companies. The commenter also suggested that allowing smaller BDCs to benefit from non-accelerated filer status would ease regulatory costs and burdens, which could encourage more BDCs to enter public markets, creating greater access to capital for small operating companies and expanding investment opportunities for retail investors.[153]

3. Final Amendments

After considering the comments, we are adopting the final amendments substantially as proposed. The final amendments add a new condition to the accelerated and large accelerated filer definitions in Rule 12b–2 that excludes an issuer that is eligible to be an SRC and that had annual revenues of less than $100 million in the most recent fiscal year for which audited financial statements are available. The amendments also allow BDCs to qualify for this exclusion if they meet the requirements of the SRC revenue test using their annual investment income as the measure of annual revenue, although BDCs would continue to be ineligible to be SRCs.[154] The final amendments are consistent with our historical practice of providing scaled disclosure and other accommodations for smaller issuers [155] and with recent actions by Congress to reduce burdens on new and smaller issuers.[156] The table below summarizes the conditions required to be considered an accelerated and large accelerated filer under the final amendments to Rule 12b–2.

TABLE 1—ACCELERATED FILER AND LARGE ACCELERATED FILER CONDITIONS UNDER THE FINAL AMENDMENTS

Final accelerated filer conditions	Final large accelerated filer conditions
The issuer has a public float of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter.	The issuer has a public float of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter.
The issuer has been subject to the requirements of Exchange Act Section 13(a) or 15(d) for a period of at least twelve calendar months.	Same.
The issuer has filed at least one annual report pursuant Exchange Act Section 13(a) or 15(d) ...	Same.
The issuer is not eligible to use the requirements for SRCs under the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the ''smaller reporting company'' definition in Rule 12b–2 or, in the case of a BDC, does not meet the requirements of the revenue test in those paragraphs using annual investment income as the measure of its annual revenues.	Same.

Below we discuss specific aspects of the final amendments about which we received significant public comment and our response to those comments. In many cases, our responses reflect analysis and data that is more comprehensively presented in the Economic Analysis.[157]

[145] *See* letter from IMA.

[146] *See, e.g.,* letters from BDO, CAQ, Crowe, EY, KPMG, PWC, and RSM.

[147] *See, e.g.,* letters from Concert, MSB, Nasdaq, and Xenon.

[148] *See, e.g.,* letters from MSB and Summit.

[149] *See* letter from Corvus. Public float for both SRC status and accelerated and large accelerated filer status is measured on the last business day of the issuer's most recently completed second fiscal quarter, and revenue for purposes of determining SRC status is measured based on annual revenues for the most recent fiscal year completed before the last business day of the second fiscal quarter. Therefore, an issuer will be aware of any change in SRC status or accelerated or large accelerated filer status as of that date. Although an issuer that determines it will no longer be eligible to be an SRC is permitted to continue to use the SRC accommodations for the Form 10–K for the year in which it fails the measurement test, an issuer that becomes an accelerated or large accelerated filer on that same measurement date would be required to include the ICFR auditor attestation in that Form 10–K. *See* Rule 12b–2, Item 10(f)(2)(i)(C), and Rule 405. Although the transition provisions apply differently, the measurement dates for SRC status and accelerated and large accelerated filer status each provide an issuer with at least six months to prepare for a change in its status, and we continue to believe that this is an adequate amount of time to prepare for the transition.

[150] *See, e.g.,* letters from Dorsey & Whitney LLP (Aug. 16, 2019) (''Dorsey & Whitney'') and Proskauer Rose LLP (July 26, 2019) (''Proskauer'').

[151] *See* letter from Dorsey & Whitney.

[152] *See* letter from Proskauer.

[153] *Id.*

[154] *See* Section II.B.3.f. below.

[155] *See, e.g., Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)]; *Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (''2007 SRC Adopting Release''); and SRC Adopting Release, note 12 above.

[156] *See* note 11 above.

[157] *See* Section IV. below.

a. Using Revenue for Determining Accelerated and Large Accelerated Filer Status

As discussed above,[158] several commenters supported the use of revenue in the proposal, providing a variety of reasons that a revenue measurement is preferable to using a public float measurement.[159] Others, however, questioned whether revenue is an appropriate measure for determining whether an issuer should be considered a non-accelerated filer.[160] One of these commenters asserted that low-revenue issuers may have less sophisticated or experienced accounting functions and some aspects of their business may be associated with accounting complexities.[161] Also, the commenter suggested that these issuers may recognize revenue in ways that could result in them frequently transitioning in and out of non-accelerated filer status.[162]

As we discuss in more detail below,[163] we continue to believe, as a general matter, that there may be greater costs and relatively lower benefits to including low-revenue issuers, as compared to other issuers, in the accelerated and large accelerated filer definitions. While we recognize that the circumstances of individual issuers and their accounting systems and processes may vary, we believe that low-revenue issuers may, on average, be less susceptible to the risk of certain types of restatements, such as those related to revenue recognition.[164] We also note that the revisions to the transition thresholds included in the final amendments may help minimize the risk of frequent reclassifications of issuer status.[165] For these reasons, we continue to believe that revenue is an appropriate measure for determining whether an issuer should be considered a non-accelerated filer.

b. Effect on Capital Formation and the Number of Public Companies

Under the final amendments, an issuer that is eligible to be an SRC and that meets the SRC revenue test will not be required to comply with accelerated or large accelerated filer requirements and, thereby, will not be subject to the ICFR auditor attestation requirement. Not subjecting these affected issuers to the ICFR auditor attestation requirement should reduce their compliance costs. As discussed in the Economic Analysis,[166] we estimate that, consistent with the proposal, an issuer no longer subject to the ICFR auditor attestation requirement would save approximately $210,000 per year comprised of approximately $110,000 per year reduction in audit fees and an additional reduction in non-audit costs of approximately $100,000.

Some commenters stated that eliminating the ICFR auditor attestation requirement would enhance capital formation or allow those issuers to preserve capital.[167] We note, however, that a number of other commenters asserted that these cost savings would be small,[168] and may not help capital formation.[169] As we discuss in the Economic Analysis,[170] we continue to believe that the expected savings are likely to represent a meaningful cost savings for many of the affected issuers and, therefore, may have a positive effect on capital preservation and formation. Although the average annual cost savings may represent a small percentage of the average affected issuer's revenues and market capitalization, we believe those savings may be meaningful given that affected issuers have, on average, negative net income and negative net cash flows from operations.[171] More generally, low-revenue issuers are likely to face financing constraints because they do not have access to internally generated capital.[172] Therefore, the average savings of $210,000 per year for these issuers may be put to productive use[173] such as developing the company.[174]

As we noted in the Proposing Release,[175] the affected issuers are a type of smaller issuer whose representation in public markets has decreased relative to the years before SOX. Over the past two decades, the number of issuers listed on major exchanges has decreased by about 40 percent,[176] but the decline has been concentrated among smaller size issuers. For example, the number of listed issuers with a market capitalization below $700 million has decreased by about 65 percent,[177] and the number of issuers with less than $100 million in revenue has decreased by about 60 percent.[178] Although factors other than the ICFR auditor attestation requirement may have contributed to the decline,[179] we believe that the described cost reductions associated with the final amendments could be a positive factor in encouraging additional small companies to register their securities offerings or a class of their securities, which would provide an increased level of transparency and investor protection with respect to those companies.[180]

c. Effect on Investor Protection

We continue to believe that the amendments are not likely to have a significant effect on the overall ability of investors in the affected issuers to make informed investment decisions and note that many commenters agreed with this assessment.[181] As discussed in greater detail in the Proposing Release,[182] issuers have a number of other obligations that we believe will provide sufficient protections for investors in the affected issuers and allow investors in those issuers to make informed investment decisions. These responsibilities derive from the Foreign Corrupt Practices Act (''FCPA'')

[158] *See* Section II.A.2.a. above.

[159] *See, e.g.,* letters from Broadmark, Chamber, Concert, Corvus, and MSB.

[160] *See, e.g.,* letters from EY and Grant Thornton, and NASBA.

[161] *See* letter from EY.

[162] *Id.*

[163] *See* Sections II.B.3.d. and Section IV.C.2.d. below.

[164] *See* Section IV.C.3. below.

[165] *See* Section II.C. below.

[166] *See* Section IV.C.2.b. below.

[167] *See, e.g.,* letters from Andersen, CLSA, Concert, ICBA, and NASBA.

[168] *See* letters from CFA, CFA Inst., CII, and Prof. Barth *et al.*

[169] *See* note 50 above.

[170] *See* Section IV.C.2.d. below.

[171] *See* note 362 below.

[172] This information is based on staff analysis of data from Compustat. *See* Section IV.C.2.d. below.

[173] For example, in a survey of issuers in the biotech industry, among 11 biotech EGCs that responded to a question regarding how an extension of the exemption from the ICFR auditor attestation requirement would affect them given the costs associated with the requirement, eight out of the 11 issuers indicated that they expected a positive impact on investments in research and development and six out of the 11 issuers indicated that they expected a positive impact on hiring employees. *See* BIO Study, note 423 above.

[174] *See, e.g.,* letters from Adamas, Aequor, Andersen, Ardelyx, Catalyst, Chiasma, CLSA, Concert, Corvus, CymaBay, Daré, Evoke, Equillium, Gritstone, ICBA, Kezar, Marinus, Millendo, NASBA, Organovo, Pieris, Revance, SI–BONE, Sutro, Syros, Teligent, and Zynerba.

[175] *See* Section III.C.1. of the Proposing Release, note 4 above. Staff extracted information regarding whether issuers reported having securities registered under Section 12(b) of the Exchange Act from the cover page of annual report filings using a computer program supplemented with hand collection. *See* note 336 below for details on the identification of the population of affected issuers.

[176] This estimate is based on staff analysis of data from the Center for Research in Security Prices database for December 1998 versus December 2018. The estimate excludes RICs and issuers of ADRs.

[177] *Id.*

[178] This estimate is based on staff analysis of data from Standard & Poor's Compustat and Center for Research in Security Prices databases for fiscal year 1998 versus fiscal year 2017. The estimate excludes RICs and issuers of ADRs.

[179] *See* note 54 above.

[180] *See, e.g.,* letters from AdvaMed, AdvaMed *et al.,* Broadmark, Cerecor, and ICBA.

[181] *See* note 61 to 68 above and accompanying text.

[182] *See* Section II.B. of the Proposing Release, note 4 above.

requirements with respect to internal accounting controls [183] as well as a number of different changes to financial reporting that were introduced by SOX.[184]

For example, although a non-accelerated filer that is eligible to be an SRC and that meets the SRC revenue test will not be subject to the ICFR auditor attestation requirement, it will remain subject to the SOX Section 404(a) requirement to state in its annual report the responsibility of management for establishing and maintaining an adequate control structure and procedures for financial reporting, and for that report to contain an assessment of the effectiveness of that structure and its procedures. In addition, affected issuers are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.[185] Also, the principal executive and financial officers of certain issuers are required to certify that, among other things, they are responsible for establishing and maintaining ICFR, have designed disclosure controls and procedures to ensure material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, and have evaluated and reported on the effectiveness of the issuer's disclosure controls and procedures.[186]

Furthermore, the issuers that are subject to the final amendments will remain subject to a financial statement audit by an independent auditor, which will help maintain appropriate investor protections. Even without an ICFR auditor attestation requirement, an independent auditor is required to consider ICFR in the performance of a financial statement audit.[187] We acknowledge, as stated by some commenters,[188] that the objective of a financial statement audit and the level of control testing performed is different from an ICFR audit. However, we believe that the requirements of a financial statement audit, among other requirements, provide some additional protections and that, for low-revenue SRCs, this and the other protections and factors associated with these issuers described above sufficiently mitigate the risk that the final amendments will adversely affect the ability of investors to make informed investment decisions.[189]

For example, the auditor in a financial statement audit is required to identify and assess the risks of material misstatements, which is similar to the risk assessment evaluation required in an ICFR auditor attestation. Additionally, the auditor engaged in a financial statement audit often may test the operating effectiveness of certain internal controls even if not performing an integrated audit to reduce the extent of substantive testing required to issue an opinion on the financial statements. Moreover, even if an auditor decides not to rely on internal controls to reduce the extent of substantive testing, the auditor may still identify internal control deficiencies during such substantive testing in a financial statement audit.

Under PCAOB standards, the evaluation and communication of significant deficiencies and material weaknesses in ICFR to management and the issuer's audit committee is required in both a financial statement audit and an ICFR auditor attestation.[190] The evaluation of the severity of a control deficiency identified by the auditor is the same for a financial statement audit and an ICFR auditor attestation. Further, a financial statement auditor has the responsibility to review management's disclosure for any misstatement of facts, such as a statement that ICFR is effective when there is a known material weakness.[191] Therefore, we continue to believe significant deficiencies and material weaknesses that an ICFR auditor attestation may uncover also may be uncovered as a part of the financial statement audit of a low-revenue SRC. As discussed above,[192] because of these requirements, a number of commenters agreed that an auditor of the financial statements of a low-revenue issuer that would be exempt from the ICFR auditor attestation requirement under the final amendments would still be required to consider ICFR and therefore this process would provide sufficient investor protection.

Other developments may serve to reinforce these existing investor protections. In 2010, the PCAOB adopted enhanced auditing standards related to the auditor's assessment of, and response to, risk that, in part, clarify and augment the extent to which internal controls are to be considered in a financial statement audit.[193] In particular, these risk assessment standards require auditors in both an integrated and financial statement audit to evaluate the design of certain controls.[194] The PCAOB has expressed concern about the number and significance of deficiencies in auditing firm compliance with these risk assessment auditing standards, but it has also noted promising improvements in their application.[195]

Additionally, recent settled charges against four public companies for failing to maintain effective ICFR for seven to 10 consecutive annual reporting periods [196] may have a deterrent effect on issuers failing to remediate material weaknesses, which could reduce the overall rate of persistence of material weaknesses in ICFR. Also, if management elects to obtain and use automated controls testing and process automation,[197] this may result in

[183] The FCPA added Section 13(b)(2)(B) to the Exchange Act, 15 U.S.C 78m(b)(2)(B) (referring to ''internal accounting controls'' rather than ICFR).

[184] *See, e.g.,* SOX Sections 302, 15 U.S.C. 7241, and 404(a) and related rules. *See* 17 CFR 229.308, 17 CFR 240.13a–15, 17 CFR 240.15d–15, Form 20–F, Form 40–F, 17 CFR 270.30a–2, and 17 CFR 270.30a–3.

[185] 15 U.S.C. 78m(b)(2)(B).

[186] *See* 17 CFR 240.13a–14 or 17 CFR 240.15d–14 (requiring certification) and 17 CFR 229.601(b)(31) (prescribing certification content). These rules were adopted pursuant to SOX Section 302. *See* 15 U.S.C. 7241.

[187] *See* Public Company Accounting Oversight Board (''PCAOB'') Accounting Standard (''AS'') 2110, *Identifying and Assessing Risks of Material Misstatement,* paragraphs .18 through .40 (''PCAOB AS 2110''), paragraphs .18 through .40.

[188] *See* note 83 above.

[189] *See* Section IV.C.3.b. below (stating that, in the Proposing Release, note 4 above, we noted that low-revenue issuers may be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation, perhaps because they have less complex financial systems and controls).

[190] *See* Section II.C. of the Proposing Release, note 4 above.

[191] *Id.*

[192] *See* notes 61 to 68 above and accompanying text.

[193] *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release No. 2010–004 (Aug. 5, 2010) (''PCAOB Release No. 2010–004''). *See also Public Company Accounting Oversight Board; Order Approving Proposed Rules on Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* Release No. 34–63606, File No. PCAOB 2010–01 (Dec. 23, 2010) [75 FR 82417 (Dec. 30, 2010)] (''PCAOB Release No. 2010–01''). These auditing standards are discussed in further detail in the Economic Analysis. *See* Section IV.B.1. below.

[194] *See* AS 2110, paragraphs .18 through .40, note 187 above.

[195] *See Inspection Observations Related to PCAOB ''Risk Assessment'' Auditing Standards (No. 8 through No.15),* PCAOB Release No. 2015–007 i through iii (Oct. 15, 2015) (''PCAOB Release No. 2015–007'').

[196] *See SEC Charges Four Public Companies with Longstanding ICFR Failures,* press release (Jan. 29,2019) (''SEC Press Release''), available at *https://www.sec.gov/news/press-release/2019-6.*

[197] *See, e.g.,* Kevin Moffitt, Andrea Rozario, & Miklos Vasarhelyi (2018), *Robotic Process Automation for Auditing,* Journal of Emerging Technologies, 15(1) Acct. 1 (''Robotic Process Automation'') (describing how, for example, a robotic process automation program can be ''set up to automatically match purchase orders, invoices, and shipping documents [and] can check that the

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improvements in ICFR regardless of the ICFR auditor attestation requirement if their increased application results in more robust financial reporting with fewer opportunities for ICFR deficiencies and/or in an increase by management in their testing and related improvements of controls. In Section IV.C.3.b.5, we note, as an example, that issuers may have made investments in systems, procedures, or training to explain how control improvements may persist for certain affected issuers. Finally, we note that auditors have had many years of experience with the 2010 risk assessment standards, and therefore auditors may be more likely to test ICFR, even if an ICFR auditor attestation is not required, as a means of enhancing auditing efficiency.[198]

We recognize that some commenters disagreed with this assessment and asserted that investor protections other than the ICFR auditor attestation requirement would not be sufficient because, among other reasons, a financial statement audit has a different objective than an integrated audit,[199] testing of ICFR in a financial statement audit is not as extensive,[200] it is more difficult for a financial statement auditor to challenge the design of ICFR,[201] and a financial statement audit is not designed to identify significant ICFR deficiencies or material weaknesses.[202] As discussed in the Economic Analysis, we acknowledge that the amendments may be associated with some adverse effects on the effectiveness of ICFR and the reliability of financial statements for the affected issuers.[203] However, the Proposing Release presented evidence that suggests that these effects and their impact on investor protection are likely to be mitigated in the case of the affected issuers as compared to other accelerated filers. The Economic Analysis provides further related analysis in response to commenter feedback and does not find evidence that leads us to alter this view.[204]

One commenter indicated that a low-revenue issuer could have a large market capitalization and thus ''greater investor exposure.'' [205] As discussed in the Economic Analysis,[206] we agree that, as capitalization increases, there is more investor capital at risk. We note, however, that relative to higher-revenue issuers, on average, risk among these issuers is likely more associated with their future prospects than their current financial statements.[207] Therefore, exempting low-revenue issuers from the ICFR auditor attestation requirement is less likely to affect investor protections with respect to those issuers.

One commenter noted its concern that certain issuers that would no longer be subject to the ICFR auditor attestation requirement are conducting large initial public offerings (''IPOs'') based on key performance indicators that are derived from financial systems, and that eliminating the ICFR auditor attestation requirement could result in potentially less robust internal controls and unreliable data.[208] To the extent the commenter is primarily concerned with the information available to investors at the time of an IPO, we note that the affected issuers that would be newly exempt from the ICFR auditor attestation requirement are generally more mature firms that are not within five years of their IPO.

Also, we believe the risk for those low-revenue issuers for which key performance indicators are material to investors and that are derived from financial systems is mitigated by the requirement to maintain, evaluate, and disclose effectiveness of disclosure controls and procedures [209] on a quarterly basis.[210] Key performance indicators or non-GAAP measures disclosed within a report filed or submitted to the Commission generally are within the scope of disclosure controls and procedures. The financial systems from which an issuer derives the key performance indicator or non-GAAP measure would normally be included in ICFR and, therefore, within the scope of management's assessments as well. Further, the Commission recently issued disclosure guidance on key performance indicators and metrics and reminded issuers of the importance of effective controls and procedures when disclosing material key performance indicators or metrics that are derived from their own information.[211]

d. Disproportionate Costs and Benefits of the ICFR Auditor Attestation for Small and Low-Revenue Companies

Not only is the ICFR auditor attestation requirement costly in general, as discussed above, a number of commenters asserted that the ICFR auditor attestation requirement is disproportionally costly to small and low-revenue issuers.[212] We agree that the costs of the ICFR auditor attestation requirement may be particularly burdensome for these issuers because they include fixed costs that are not scalable for smaller issuers, as also noted by several commenters.[213] Further, low-revenue issuers have limited access to internally generated capital, and so the costs may more directly impact their ability to spend on investments or hiring.[214] We therefore expect that reducing these costs would have a more beneficial impact on small and low-revenue issuers than it would for other issuers. Some commenters similarly expressed the view that the amendments would enhance these issuers' ability to preserve capital without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers.[215]

As discussed above, other commenters claimed that eliminating the ICFR auditor attestation requirement would not substantially reduce costs to issuers [216] and that there would be other negative impacts of this change.[217] We acknowledge that the magnitude of these cost savings likely will vary among issuers depending upon their

price and quantity on each of the documents match [to] help auditors validate the effectiveness of preventive internal controls . . . .'').

[198] *See Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million* at 106 (Apr. 2011) (''2011 SEC Staff Study''), available at *https://www.sec.gov/news/studies/2011/404bfloat-study.pdf* (stating that ''. . . once effective controls are in place at the issuer, the auditor is more likely to continue to test them even if [it is] not issuing an auditor attestation during a particular year in order to rely on them for purposes of reducing substantive testing in the audit of the financial statements, particularly for issuers that are larger and more complex'').

[199] *See, e.g.,* letters from CAQ, CFA Inst., and RSM.

[200] *See* letter from EY.

[201] *Id.*

[202] *Id.*

[203] *See* Section IV.A. below.

[204] *Id.*

[205] *See* letter from Grant Thornton.

[206] *See* Section IV.C.3.d. below.

[207] Also, the affected parties are limited to issuers with no more than $700 million in public float. Further, as discussed in Section IV.C.3.d below, we estimate that in aggregate the affected issuers that will be newly exempt from all ICFR auditor attestation requirements represent 0.2 percent of the total equity market capitalization of issuers.

[208] *See* letter from NASBA.

[209] Although there is substantial overlap between an issuer's disclosure controls and procedures and ICFR, there are elements of each that are not subsumed by the other. *See* 17 CFR 240.13a–15 and 17 CFR 240.15d–15.

[210] *See* 17 CFR 240.13a–14 and 17 CFR 240.15d–14.

[211] *See* Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 34–88094 (Jan. 30, 2020).

[212] *See* note 102 above and accompanying text.

[213] *See* letters from ASA, Broadmark, Chamber, and Guaranty.

[214] *See, e.g.,* letters from Daré, Summit and Xenon.

[215] *See* letters from Andersen, CLSA, Concert, ICBA, and NASBA.

[216] *See* note 108 above and accompanying text.

[217] *See* notes 110 to 113 above and accompanying text.

particular facts and circumstances [218] and, as some commenters asserted,[219] ICFR auditor attestations have become less expensive over time because auditors are more experienced in conducting them. However, based on the comments received and our own analysis of available data,[220] we believe the cost reductions from not being subject to the ICFR auditor attestation requirement could be substantial for affected issuers.

We believe the benefits of the ICFR auditor attestation requirement likely are fewer for low-revenue SRCs than for other issuers, an assessment supported by some commenters.[221] As a result, obtaining the ICFR auditor attestation is likely, on average, to be less meaningful for these issuers, and not obtaining one should have less of an impact on investor protection than for other types of issuers. First, we note that low-revenue SRCs may be less susceptible to the risk of certain kinds of misstatements, such as those related to revenue recognition. As discuss in the Economic Analysis,[222] 10 to 20 percent of restatements and about 60 percent of financial disclosure fraud cases in recent times have been associated with improper revenue recognition,[223] which is less of a risk, for example, for issuers that currently have little to no revenue.

Second, as we noted in Table 14 of the Proposing Release,[224] issuers with revenues of less than $100 million have, on average, restatement rates that are three to nine percentage points lower than those for higher-revenue issuers. Moreover, certain low-revenue SRCs likely have less complex financial systems and controls and, therefore, may be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation.

Third, we believe that those issuers' financial statements may be less critical to assessing their valuation given, for example, the relative importance of their future prospects. We recognize that other commenters disagreed and asserted that benefits of the ICFR auditor attestation requirement are greater for lower-revenue and smaller issuers than for other issuers.[225] We carefully considered these comments and, as discussed in the Economic Analysis, investigated the claims by conducting supplemental analysis, but we did not find evidence that led us to alter our views.[226]

e. Relationship Between Non-Accelerated Filers and SRCs

Under the final amendments, some, but not all, SRCs would become non-accelerated filers. We are not adopting an alternative suggested by some commenters of fully aligning the SRC and non-accelerated filer definitions. As we note in the Economic Analysis,[227] although full alignment of the two definitions could provide several benefits, including greater regulatory simplicity, reducing any frictions or confusion associated with issuers' determination of their filer status or reporting regime, and expanding the number of issuers that qualify as non-accelerated filers, fully aligning the two definitions also could result in costs that are greater than those for the amendments we are adopting. For example, the mitigating factors associated with exempting low-revenue issuers, such as a potential lower susceptibility to the risks of certain kinds of misstatements and a greater role of future prospects relative to current financial statements in driving market valuations for these issuers as compared to other issuers,[228] may not be present or may be more limited, for other types of SRCs.

As a result, fully aligning the SRC and non-accelerated filer thresholds could have adverse effects on the reliability of the financial statements of the issuers with higher revenues and the ability of investors to make informed investment decisions about those issuers.[229] Therefore, we do not believe it would be appropriate at this time to increase the public float threshold for non-accelerated filers to align that definition with the SRC definition. Additionally, we note that many non-accelerated filers remain eligible for the JOBS Act Exemption for their first five years as a public company. The table below summarizes the relationships between SRCs and non-accelerated and accelerated filers under the final amendments.

TABLE 2—RELATIONSHIPS BETWEEN SRCS AND NON-ACCELERATED, ACCELERATED, AND LARGE ACCELERATED FILERS UNDER THE FINAL AMENDMENTS

Relationships between SRCs and non-accelerated, accelerated, and large accelerated filers under the final amendments		
Status	Public float	Annual revenues
SRC and Non-Accelerated Filer	Less than $75 million	N/A.
	$75 million to less than $700 million	Less than $100 million.
SRC and Accelerated Filer	$75 million to less than $250 million	$100 million or more.
Accelerated Filer (not SRC)	$250 million to less than $700 million	$100 million or more.
Large Accelerated Filer (not SRC)	$700 million or more	N/A.

f. Effect on Business Development Companies

In a change from the proposal, the final amendments also exclude BDCs from the accelerated and large accelerated filer definitions under circumstances that are analogous to the exclusions for other issuers under the amendments. The amendments include a specific provision applicable to BDCs, because BDCs are not eligible to be SRCs and to provide a definition of ''revenue'' for BDCs to use for this purpose.[230] Specifically, a BDC will be excluded from the accelerated and large

[218] *See, e.g.,* letters from EY, Grant Thornton, and PWC.

[219] *See, e.g.,* letters from CFA Inst. and Deloitte.

[220] *See* Section IV.C.2.d.

[221] *See* notes 116 to 118 above and accompanying text.

[222] *See* Section IV.C.3. below.

[223] *See* Audit Analytics, *2017 Financial Restatements: A Seventeen Year Comparison,* (May 2018), and Committee of Sponsoring Organizations of the Treadway Commission, (''COSO''), *Fraudulent Financial Reporting 1998–2007: An Analysis of U.S. Public Companies* (2010).) (''COSO 2010 Fraud Study''), available at *http://www.coso.org/documents/COSO-Fraud-Study-2010-001.pdf.*

[224] *See* Section III.C.4.b. of the Proposing Release, note 4 above.

[225] *See* notes 119 to 124 above and accompanying text.

[226] *See* Section IV.C.3.a. below.

[227] *See* Section IV.C.5.a. below.

[228] *See* Section IV.C.3. below.

[229] *Id.*

[230] Although a BDC is considered to be eligible to use the requirements for SRCs under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in Rule 12b–2 for purposes of the amended accelerated filer and large accelerated filer definitions, BDCs will continue to be ineligible to be SRCs under the final amendments.

accelerated filer definitions in Rule 12b–2 if the BDC: (1) Has a public float of $75 million or more, but less than $700 million; and (2) has investment income of less than $100 million.[231] The amendments to Rule 12b–2 provide that, for this purpose, a BDC's revenue is the BDC's investment income, as defined in Rule 6–07.1 of Regulation S–X.[232] BDCs are subject to the same transition provisions for accelerated filer and large accelerated status that apply to other issuers under the amendments, except that the amendments' BDC-specific ''revenue'' definition will apply to these transition provisions as well.[233]

Although the Commission did not propose to exclude BDCs from the accelerated and large accelerated filer definitions using the SRC revenue test, the Commission did solicit comment on such an approach and discussed the relative costs and benefits of this alternative in the Proposing Release.[234] In response, one commenter urged that we adopt such an approach, stating that, among other reasons, the policy reasons that support providing regulatory relief to smaller reporting companies should apply equally to smaller BDCs.[235] This commenter suggested that the Commission expand the proposed amendment to the definition of accelerated filer and large accelerated filer to exclude BDCs with total investment income of less than $80 million in the most recently completed fiscal year for which audited financial statements are available and either no public float or public float of less than $700 million.

Although we observed in the Proposing Release that the SRC revenue test would not be meaningful for BDCs because BDCs prepare financial statements under Article 6 of Regulation S–X and generally do not report revenue, the final amendments' definition of ''revenue'' for purposes of the BDC-specific provisions incorporate information that BDCs report in their financial statements. A BDC's investment income includes income from dividends, interest on securities, and other income.[236] We recognize, as stated in the Proposing Release, that investors in BDCs generally may place greater significance on the financial reporting of BDCs relative to low-revenue non-investment company issuers and BDC financial statements will continue to be audited by an independent auditor. As the commenter supporting this approach observed, however, the policy considerations supporting the final amendments generally apply to BDCs.[237] Moreover, BDCs that are excluded from the accelerated and large accelerated filer definitions will remain obligated, among other things, to establish and maintain internal control over financial reporting and have management assess the effectiveness of internal control over financial reporting. The final amendments also are consistent with other rulemaking initiatives in which we have sought to provide BDCs parity with other reporting companies in appropriate circumstances.[238]

g. Effect on Foreign Private Issuers

Under the proposed amendments, an FPI would be excluded from the accelerated and large accelerated filer definitions if it qualifies as an SRC[239] under the SRC revenue test in Exchange Act Rule 12b–2. One commenter asserted that the final amendments should permit an FPI that presents its financial statements using IFRS to qualify for the exemption based on the low-revenue test.[240] We note that foreign issuers that qualify as FPIs or SRCs are permitted to avail themselves of special accommodations unique to each reporting regime, but must select one reporting regime or the other. The final amendments provide an exemption from the ICFR auditor attestation requirement for low-revenue SRCs. Issuers that qualify as FPIs and elect to use the FPI reporting regime have other accommodations available to them, such as the ability to disclose material changes in their ICFR and effectiveness of disclosure controls and procedures on an annual basis, as compared to the quarterly basis required of U.S. issuers, including SRCs.[241]

h. Requiring ICFR Auditor Attestation Less Frequently Than Annually

The final amendments do not revise our rules to require an ICFR auditor attestation requirement less frequently than annually. Issuers that are accelerated or large accelerated filers will be required to obtain an ICFR auditor attestation every year, unless they qualify as EGCs, as under our current rules. We did not propose to revise this requirement, but requested comment on this matter, and every commenter that discussed the subject[242] asserted that issuers that are subject to the ICFR auditor attestation requirement should obtain one annually. A few of these commenters asserted that requiring the ICFR auditor attestation only once every three years would not decrease costs significantly because auditors consider prior year audit results when planning and performing the current year audit, so performing an audit of ICFR every three years would reduce efficiencies gained from performing audits annually and add complexity and costs.[243] Also, one commenter indicated that auditors in many instances may continue to test internal controls in the financial statement audit, which potentially limits any resulting cost reduction.[244]

i. Check Box Indicating Whether an ICFR Auditor Attestation Is Included in a Filing

Although we did not propose a requirement that issuers report whether they have obtained an ICFR auditor attestation, we requested comment on whether we should do so. As discussed above,[245] some commenters recommended that the final rule include a requirement for an issuer to prominently disclose in its filing whether an ICFR auditor attestation is included. This type of disclosure was also recommended by the Government Accountability Office (''GAO'') in a

[231] *See* paragraphs (1)(iv), (2)(iv), and (4) of the amended definitions of accelerated filer and large accelerated filer in Rule 12b–2. Consistent with the current definitions of these terms, a BDC with public float of less than $75 million is already a non-accelerated filer, regardless of the amount of its annual investment income.

[232] *See* 17 CFR 210.6–07.1.

[233] *See* Section II.C. below (discussing the amended transition provisions more generally).

[234] *See* Sections II.C., II.E., and III.C.6. of the Proposing Release, note 4 above.

[235] *See* letter from Proskauer.

[236] A BDC's annual investment income is equivalent to annual revenues solely for purposes of the accelerated filer and large accelerated filer definitions. These amendments do not affect the meaning of ''revenue'' or ''investment income'' in other Commission rules or provisions of the securities laws.

[237] *See* letter from Proskauer.

[238] *See Securities Offering Reform for Closed-End Investment Companies,* Release No. 33427 (Mar. 20, 2019) [84 FR 14448 (Apr. 10, 2019)].

[239] *See* 2007 SRC Adopting Release, note 155 above, Section II, and *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP,* Release No. 33–8879 (Dec. 21, 2007) [73 FR 985 (Jan. 4, 2008)], Section III.E.4. (stating that an FPI is not an SRC unless it makes its filings on forms available to U.S. domestic issuers and otherwise qualifies to use the SRC scaled disclosure accommodations). We are adding instructions to the SRC definitions in Item 10(f), Rule 405, and Rule 12b–2 clarifying our position that an FPI is not eligible to use the requirements for SRCs unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. GAAP.

[240] *See* letter from Dorsey & Whitney.

[241] *See* Rule 13a–15(d), Rule 15d–15(d), Item 15(d) of Form 20–F, and General Instruction B(6)(e) of Form 40–F.

[242] *See, e.g.,* letters from Crowe, KPMG, and NASBA.

[243] *See, e.g.,* letters from Crowe and KPMG.

[244] *See* letter from KPMG.

[245] *See* notes 138 to 143 above and the accompanying text.

2013 study of internal controls requirements.[246] No commenters opposed such a requirement. Disclosure of the ICFR auditor attestation is currently required within the auditor's report on the financial statements and management's annual report on ICFR.[247] After reviewing these comments, we are persuaded to add a check box to the cover pages of Forms 10–K, 20–F, and 40–F to indicate whether an ICFR auditor attestation is included in the filing because we agree that more prominent and easily accessible disclosure of this information would be useful to investors and market participants while imposing only minimal burdens on issuers.

Under the new rule, issuers will be required to include the check box on their cover pages in any annual report filed on or after the final amendments' effective date. Once issuers are required to tag the cover page disclosure data using Inline eXtensible Business Reporting Language (''Inline XBRL''), they will also be required to tag this cover page check box disclosure in Inline XBRL because Item 406 of Regulation S–T (''Item 406''),[248] Item 601(b)(104),[249] paragraph 104 to ''Instructions as to Exhibits'' of Form 20–F, and paragraph B.17 under the ''General Instructions'' of Form 40–F require those issuers to tag every data point on the cover pages of Form 10–K, Form 20–F, and Form 40–F.[250] We do not expect the incremental compliance burden associated with tagging the additional cover page information to be significant, given that registrants already are being required on a phased-in basis to tag other cover page information as well as information in their financial statements.[251]

[246] *See* U.S. Gov't Accountability Office, GAO–13–582, *Internal Controls: SEC Should Consider Requiring Companies to Disclose Whether They Obtained an Auditor Attestation* (July 2013) (''2013 GAO Study'').

[247] *See* Item 308 of Regulation S–K and PCAOB AS 3101.

[248] 17 CFR 232.406.

[249] 17 CFR 229.601(b)(4).

[250] Item 406 mandates that companies required to tag their financial statements in Inline XBRL must also tag their cover page data in Inline XBRL. Operating companies are required to tag their financial statements in Inline XBRL on a phase-in basis. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (July 10, 2018)] and 17 CFR 232.405.

[251] Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') filers that are required by Item 406 to provide cover page Inline XBRL data tagging will be required to tag the ICFR data element only after a revised Document Entity Identifier taxonomy has been posted to *SEC.gov* and the Commission has adopted a new EDGAR Filer Manual that reflects appropriate changes to the submission of Forms 10–K, 20–F and 40–F.

C. Amendments To Increase the Public Float Transition Thresholds From $50 Million to $60 Million and $500 Million to $560 Million and To Add the SRC Revenue Test to the Transition Threshold

1. Proposed Amendments

An issuer initially becomes an accelerated filer after it first meets certain conditions as of the end of its fiscal year, including that it had a public float of $75 million or more but less than $700 million as of the last business day of its most recently completed second fiscal quarter. An issuer initially becomes a large accelerated filer in a similar manner, including that it had a public float of $700 million or more as of the last business day of its most recently completed second fiscal quarter. Once the issuer becomes an accelerated filer, it will not become a non-accelerated filer unless it determines at the end of a fiscal year that its public float had fallen below $50 million on the last business day of its most recently completed second fiscal quarter. Similarly, a large accelerated filer will remain one unless its public float had fallen below $500 million on the last business day of its most recently completed second fiscal quarter. If the large accelerated filer's public float falls below $500 million but is $50 million or more, it becomes an accelerated filer. Alternatively, if the issuer's public float falls below $50 million, it becomes a non-accelerated filer.[252] The purpose of these transition thresholds is to avoid situations in which an issuer frequently enters and exits accelerated and large accelerated filer status due to small fluctuations in its public float.

In the SRC Adopting Release,[253] we amended the SRC rules so that the SRC transition thresholds were set at 80 percent of the corresponding initial qualification thresholds. In the Proposing Release, we proposed to revise the accelerated and large accelerated filer transition thresholds to be 80 percent of the corresponding initial qualification thresholds to align the transition thresholds across the SRC, accelerated filer, and large accelerated filer definitions. Additionally, we indicated that revising these thresholds would limit the cases in which an issuer could be both an accelerated filer and an SRC or a large accelerated filer and an SRC, thereby reducing regulatory complexity.

We proposed to revise the transition threshold for becoming a non-accelerated filer from $50 million to $60 million and the transition threshold for leaving the large accelerated filer status from $500 million to $560 million. We also proposed to add the SRC revenue test to the public float transition thresholds for accelerated and large accelerated filers. If the SRC revenue test were not added to the accelerated filer and large accelerated filer transition provisions, an issuer's annual revenues would never factor into determining whether an accelerated filer could become a non-accelerated filer, or whether a large accelerated filer could become an accelerated or non-accelerated filer. We proposed that an issuer that is already an accelerated filer would remain one unless either its public float falls below $60 million or it becomes eligible to use the SRC accommodations under the revenue test in paragraph (2) or (3)(iii)(B) of the SRC definition,[254] as applicable.[255] Therefore, under the proposed amendments, an accelerated filer would remain an accelerated filer until its public float falls below $60 million or its annual revenues fall below the

[252] For example, under the rules prior to these amendments, if an issuer that is a non-accelerated filer determines at the end of its fiscal year that it had a public float of $75 million or more, but less than $700 million, on the last business day of its most recently completed second fiscal quarter, it will become an accelerated filer. On the last business day of its next fiscal year, the issuer must re-determine its public float to re-evaluate its filer status. If the accelerated filer's public float fell to $70 million on the last business day of its most recently completed second fiscal quarter, it would remain an accelerated filer because its public float did not fall below the $50 million transition threshold. Alternatively, if the issuer's public float fell to $49 million, it would then become a non-accelerated filer because its newly determined public float is below $50 million. As another example, an issuer that has not been a large accelerated filer but had a public float of $700 million or more on the last business day of its most recently completed second fiscal quarter would then become a large accelerated filer at the end of its fiscal year. If, on the last business day of its subsequently completed second fiscal quarter, the issuer's public float fell to $600 million, it would remain a large accelerated filer because its public float did not fall below $500 million. If, however, the issuer's public float fell to $490 million at the end of its most recently completed second fiscal quarter, it would become an accelerated filer at the end of the fiscal year because its public float fell below $500 million. Similarly, if the issuer's public float fell to $49 million, the issuer would become a non-accelerated filer.

[253] *See* note 12 above.

[254] Paragraph (2) of the SRC definition states that an issuer qualifies as an SRC if its annual revenues are less than $100 million and it has no public float or a public float of less than $700 million. Paragraph (3)(iii)(B) of the SRC definition states, among other things, that an issuer that initially determines it does not qualify as an SRC because its annual revenues are $100 million or more cannot become an SRC until its annual revenues fall below $80 million.

[255] An issuer that is initially applying the SRC definition or previously qualified as an SRC would apply paragraph (2) of the SRC definition. Once an issuer determines that it does not qualify for SRC status, it would apply paragraph (3)(iii)(B) of the SRC definition at its next annual determination.

applicable revenue threshold ($80 million or $100 million), at which point it would become a non-accelerated filer.

Similarly, we proposed conforming amendments to the large accelerated filer transition provisions for when an issuer that is already a large accelerated filer transitions to either accelerated or non-accelerated filer status. To transition out of large accelerated filer status at the end of the issuer's fiscal year, an issuer would need to have a public float below $560 million as of the last business day of its most recently completed second fiscal quarter or meet the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the SRC definition. A large accelerated filer would become an accelerated filer at the end of its fiscal year if its public float fell to $60 million or more but less than $560 million as of the last business day of its most recently completed second fiscal quarter and its annual revenues are not below the applicable revenue threshold ($80 million or $100 million). The large accelerated filer would become a non-accelerated filer if its public float fell below $60 million as of the last business day of its most recently completed second fiscal quarter or its annual revenues fell below the applicable revenue threshold ($80 million or $100 million).[256]

2. Comments

We received very few comments regarding the proposed changes to the transition thresholds. The commenters who discussed the proposed amendments to increase the public float transition thresholds supported them.[257] One commenter also suggested that the Commission consider indexing the thresholds to inflation in a manner similar to the indexing that applies to the EGC definition.[258] Only two commenters addressed the proposed amendments to add the SRC revenue test to the transition thresholds, and these commenters supported that proposal.[259]

3. Final Amendments

After considering the comments, we are adopting the final amendments as proposed. As discussed in greater detail in the Economic Analysis,[260] transition thresholds in Rule 12b–2 are lower than entry thresholds to keep issuers from frequently needing to reclassify their filer status. The frequent reclassifications that would result without the transition thresholds may cause confusion for issuers and investors as to the issuer's status. Also, such frequent reclassifications may increase issuers' costs because they would frequently need to revise their disclosure schedules and continually consider the impact of whether they are subject to the ICFR auditor attestation requirement from one year to the next, and may increase investors' incremental costs of evaluating the reliability of the issuer's financial disclosures. Therefore, we believe a transition threshold is appropriate. However, we recognize that providing a transition threshold results in some issuers remaining in their filer status even though their public float or revenues are below that filer status's entry threshold.

The final amendments revise the public float transition threshold for accelerated and large accelerated filers to become a non-accelerated filer from $50 million to $60 million and revise the public float transition threshold for a large accelerated filer to lose its large accelerated filer status from $500 million to $560 million. Prior to the final amendments, the public float threshold for an accelerated and large accelerated filer to become a non-accelerated filer was $50 million and the public float transition threshold for a large accelerated filer to lose its large accelerated filer status was $500 million. We believe these threshold amounts are too low and result in more issuers than intended being classified as an accelerated or large accelerated filer. However, we believe there should be some transition threshold so as to avoid some volatility. The amendments would make the public float transition thresholds 80 percent of the initial thresholds, which is consistent with the percentage used in the transition thresholds for SRC eligibility. We believe this approach appropriately balances the risk of frequent reclassifications resulting from a higher percentage threshold against the risk of delaying appropriate transitions due to a lower threshold. The table below summarizes how an issuer's filer status will change based on its subsequent public float determination.

TABLE 3—SUBSEQUENT DETERMINATION OF FILER STATUS BASED ON PUBLIC FLOAT UNDER FINAL AMENDMENTS

Final amendments to the public float thresholds			
Initial public float determination	Resulting filer status	Subsequent public float determination	Resulting filer status
$700 million or more	Large Accelerated Filer	$560 million or more	Large Accelerated Filer.
		Less than $560 million but $60 million or more.	Accelerated Filer.
		Less than $60 million	Non-Accelerated Filer.
Less than $700 million but $75 million or more.	Accelerated Filer	Less than $700 million but $60 million or more.	Accelerated Filer.
		Less than $60 million	Non-Accelerated Filer.

[256] One exception to this requirement is that an issuer that was a large accelerated filer whose public float had fallen below $700 million (but remained $560 million or more) but became eligible to be an SRC under the SRC revenue test in the first year the SRC amendments became effective would become a non-accelerated filer even though its public float remained at or above $560 million. *See* SRC Adopting Release, note 12 above, at n. 31 (''For purposes of the first fiscal year ending after effectiveness of the amendments, a registrant will qualify as a SRC if it meets one of the initial qualification thresholds in the revised definition as of the date it is required to measure its public float or revenues (the 'measurement date'), even if such registrant previously did not qualify as a SRC.'').

[257] *See, e.g.,* letters from CLSA, Nasdaq, and RSM.

[258] *See* letter from RSM.

[259] *See* letters from CLSA and Nasdaq.

[260] *See* Section IV.C.4.c below.

The final amendments also add the SRC revenue test to the transition threshold for accelerated and large accelerated filers. As we noted in the Proposing Release, if we do not add the SRC revenue test to the accelerated filer and large accelerated filer transition provisions, an issuer's annual revenues would never factor into determining whether an accelerated filer could become a non-accelerated filer, or whether a large accelerated filer could become an accelerated or non-accelerated filer. We note that one commenter stated that the manner in which issuers may recognize revenue could cause them to frequently lose and gain non-accelerated filer status.[261] We believe that providing transition thresholds should mitigate any such concern.

Under the final amendments, an accelerated filer with revenues of $100 million or more that is eligible to be an SRC based on the public float test contained in paragraphs (1) and (3)(iii)(A) of the SRC definition can transition to non-accelerated filer status in a subsequent year if it has revenues of less than $100 million. For example, an issuer with a December 31 fiscal year end that did not exceed the public float threshold in the prior year and that has a public float, as of June 30, 2020, of $230 million and annual revenues for the fiscal year ended December 31, 2019 of $101 million will be eligible to be an SRC under the public float test; however, because the issuer would not be eligible to be an SRC under the SRC revenue test, it will be an accelerated filer (assuming the other conditions described in Table 1 are also met). At the next determination date (June 30, 2021), if its public float, as of June 30, 2020, remains at $230 million and its annual revenues for the fiscal year ended December 31, 2019 are less than $100 million, the issuer will be eligible to be an SRC under the SRC revenue test (in addition to the public float test) and thus it will become a non-accelerated filer.

On the other hand, an issuer with a December 31 fiscal year end that has a public float, as of June 30, 2020, of $400 million and annual revenues for the fiscal year ended December 31, 2019 of $101 million will not be eligible to be an SRC under either the public float test or the SRC revenue test and will be an accelerated filer (assuming the other conditions described in Table 1 also are met). At the next determination date (June 30, 2021), if its public float, as of June 30, 2021, remains at $400 million, that issuer will not be eligible to be an SRC under the SRC revenue test unless its annual revenues for the fiscal year ended December 31, 2020 are less than $80 million, at which point it will be eligible to be an SRC under the SRC revenue test and to become a non-accelerated filer.

[261] *See* letter from EY.

D. Transition Issues

The final amendments will become effective 30 days after they are published in the **Federal Register**. The final amendments will apply to an annual report filing due on or after the effective date. Even if that annual report is for a fiscal year ending before the effective date, the issuer may apply the final amendments to determine its status as a non-accelerated, accelerated, or large accelerated filer. For example, an issuer that has a March 31, 2020 fiscal year end and that is due to file its annual report after the effective date of the amendments may apply the final amendments to determine its filing status even though its fiscal year end date precedes the effective date. An issuer that determines it is eligible to be a non-accelerated filer under the final amendments will not be subject to the ICFR auditor attestation requirement for its annual report due and submitted after the effective date of the amendments and may comply with the filing deadlines that apply, and other accommodations available, to non-accelerated filers.

III. Other Matters

If any of the provisions of these amendments, or the application of these provisions to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. Pursuant to the Congressional Review Act,[262] the Office of Information and Regulatory Affairs has designated these amendments as not ''a major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

We are mindful of the costs and benefits of the amendments. The discussion below addresses the economic effects of the amendments, including their anticipated costs and benefits, as well as the likely effects of the amendments on efficiency, competition, and capital formation.[263] We also analyze the potential costs and benefits of reasonable alternatives to the amendments. Where practicable, we have attempted to quantify the economic effects of the amendments; however, in certain cases, we are unable to do so because either the necessary data are unavailable or certain effects are not quantifiable. In these cases, we provide a qualitative assessment of the likely economic effects.

A. Introduction

As discussed above, we are adopting amendments to the definitions of ''accelerated filer'' and ''large accelerated filer'' that will generally extend non-accelerated filer status to issuers with up to $700 million in public float if they are eligible to be SRCs and their revenues are less than $100 million. As non-accelerated filers, among other things, these issuers will not be required to obtain an ICFR auditor attestation pursuant to SOX Section 404(b). The amendments are intended to reduce compliance costs for these issuers while maintaining investor protections by more appropriately tailoring the types of issuers that are included in the categories of accelerated and large accelerated filers.

In the Proposing Release, we presented evidence that the imposition of the ICFR auditor attestation requirement has been associated with benefits to issuers and investors, such as reduced rates of ineffective ICFR and more reliable financial statements.[264] However, as explained in the Proposing Release, the affected issuers may find the costs of this requirement to be particularly burdensome given certain fixed costs that may not scale with size. Importantly, because these issuers have limited access to internally-generated capital, savings on compliance costs may be more likely to be applied to additional investment, research, or hiring.

We acknowledged, in the Proposing Release, that exempting these low-revenue issuers from the ICFR auditor attestation requirement may result in adverse effects such as an increased prevalence of ineffective ICFR and

[262] 5 U.S.C. 801 *et seq.*

[263] Section 2(b), 15 U.S.C. 77b(b), and Section 3(f) of the Exchange Act, 15 U.S.C. 78c(f), directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2), requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[264] *See* Section III.C.4.a. of the Proposing Release, note 4 above,. *See also* Section IV.C.3.a. below.

restatements, and we estimated the potential effects on the rates of such issues among the affected issuers. At the same time, we provided evidence in support of two mitigating factors specific to the affected issuers.[265] First, we documented that low-revenue issuers have relatively low rates of restatement, which could mean that the affected issuers may, on average, be less susceptible to the risk of certain kinds of misstatements. Next, we provided evidence that the market value of the low-revenue issuers was not as associated with contemporary financial statements as for higher-revenue issuers, which could imply that their valuations are driven to a greater degree by their future prospects.

Commenters raised a number of concerns with our analysis and conclusions in the Proposing Release. We carefully reviewed all of the comments received and in a few instances, conducted supplemental analysis in response to the issues and questions raised by those comments. Overall, based on our analysis of the available evidence and data, our primary conclusions have not substantively changed. While we address the comments in detail in the body of the Economic Analysis below, we highlight certain of our findings in relation to some commenter concerns here.

One concern raised by commenters is that rather than targeting issuers where there may be relatively fewer benefits of the ICFR auditor attestation requirement, the amendments will remove this requirement for exactly those issuers where the benefits may be greatest.[266] These commenters supported this assertion by, for example, claiming that investors react more strongly to news of restatements or material weaknesses in ICFR—and thus care more about the benefits of an ICFR auditor attestation—at small or low-revenue issuers as compared to other issuers.[267] In response to these comments, we have conducted additional analyses of the investor response to ICFR disclosures and restatement announcements. We do not find any evidence that investors react more negatively to restatements or to auditors reporting material weaknesses in ICFR at low-revenue issuers than at higher-revenue issuers. Further, based on the suggestions of a commenter,[268] we have refined our analysis of the extent to which financial statement variables are associated with the valuation of different types of issuers. We continue to find that financial statement variables explain a greater amount of the variation in stock prices and returns for higher-revenue issuers than for low-revenue issuers, even when we focus on more seasoned issuers similar to those that would be affected by the amendments or when we expand the set of variables that we consider. Overall, our analysis does not provide support for the assertion that investors care more about the information produced by the ICFR auditor attestation requirement at low-revenue issuers than at other issuers.

A few commenters asserted that the costs of the amendments will significantly outweigh any benefits.[269] We have conducted supplemental analysis and quantification of the potential costs of the amendments and do not find evidence to support the views of these commenters. We carefully considered the cost estimates provided by commenters and found them useful in refining our own analysis. However, we found some of these estimates to be overstated. For example, some estimates applied costs associated with a small fraction of issuers to all of the affected issuers or implicitly compared aggregate estimates of costs over multiple years to the estimated savings for a single year.[270] Others identified investor harms that occurred despite the ICFR auditor attestation requirement being in place, which may demonstrate the limitations of the ICFR auditor attestation requirement rather than informing us of the risks of removing the requirement.[271]

Some commenters stated that the Proposing Release did not provide sufficient quantification of the costs of the amendments.[272] In response to those comments, as additional context for our consideration of the possible effects of the final amendments, we conducted supplemental analysis of the expected frequency, type, and magnitude of potential adverse effects. We consider effects resulting from potential misreporting about the effectiveness of ICFR as well as those driven by potential changes in the actual effectiveness of ICFR. Where possible, we estimate dollar costs as well as dollar transfers across shareholders, which represent costs to some shareholders and benefits to other shareholders. We note that these cost estimates do not fully adjust for the mitigating factors that we find to be associated with low-revenue issuers and may therefore be inflated. Also, we caution against attempts to over-interpret the relation between our quantitative estimates of monetized benefits and monetized costs because we are not able to place dollar values on all of the potential costs and benefits of the amendments.

Several commenters argued that the expected cost savings are too small to be economically meaningful,[273] and that the amendments are unlikely to have capital formation benefits.[274] We acknowledge that, while the amendments could be a positive factor in the decision of additional companies to enter public markets, it may not be the decisive factor, and the direct impact of the amendments on the number of public companies may be limited to the extent that companies may be more focused on other factors associated with the decision to go public. However, we continue to believe that the expected savings is likely, in many cases, to represent a meaningful cost savings for the affected issuers.[275] In particular, while the average annual cost savings may represent a small percentage of the average affected issuers' revenues and market capitalizations, it is still likely to be meaningful given that the net income and operating cash flows of the affected issuers are typically negative.[276] These savings may thus have beneficial economic effects on net capital formation through the productive use of

[265] We also noted in the Proposing Release, note 4 above, that issuers exempted from this requirement may choose to voluntarily obtain an ICFR auditor attestation if investors demand it or the issuers otherwise deem it, from their perspective, to be the best use of their resources.

[266] *See, e.g.,* letters from CFA, CFA Inst., and CII. *See also* Commissioner Jackson's Statement.

[267] *Id.*

[268] *See* letter from Crowe.

[269] *See, e.g.,* letters from Better Markets and Prof. Barth *et al.*

[270] *See* letter from Prof. Barth *et al.* (with respect to quantified benefits of ICFR audit for the average company).

[271] *See* letters from Better Markets and Prof. Barth *et al.* (with respect to estimates of income and stock market impact of restatements).

[272] *See, e.g.,* letters from Better Markets, CFA Inst., CII, Prof. Barth *et al.,* and Prof. Ge *et al.*

[273] *See, e.g.,* letters from CFA, CFA Inst., CII, and Prof. Barth *et al.*

[274] *See, e.g.,* letters from Better Markets, CII, CFA, CFA Inst., and Prof. Ge *et al.*

[275] One commenter requested that we replicate, with recent data, the analysis in a previous study that found a ''bunching'' of firms below the public float threshold for entering accelerated filer status, in order to explore whether the costs of the ICFR auditor attestation requirement remain as high as previously documented. *See* letter from Prof. Honigsberg, *et al. See also* Commissioner Jackson's Statement. As discussed in more detail below, we provide this analysis and find that there may be some such ''bunching,'' but we note that our conclusion that the cost savings may be meaningful to the affected issuers does not rely on this analysis or the related study.

[276] *See* note 362 below.

this preserved capital towards, for example, new investments.

Some commenters indicated that the Proposing Release did not adequately consider the risk of fraud,[277] or that the risks of fraudulent financial reporting may be particularly high for low-revenue issuers.[278] We acknowledge the argument that incentives to engage in misconduct could be different for low-revenue issuers and, in response to these comments, we conducted supplemental analysis concerning the risk of fraud. In particular, we conducted an analysis to investigate this risk and did not find evidence based on the available data that low-revenue issuers that, like the affected issuers, are not within five years of their IPO (''seasoned'' issuers), are more highly represented in the set of seasoned issuers associated with financial misconduct or financial reporting fraud than they are in the overall population of seasoned issuers.We also estimated the extent to which expanding the exemption from the ICFR auditor attestation requirement could affect the likelihood of the affected issuers engaging in such activities and include a quantification of the associated costs of this risk in our overall assessment of the potential costs of the amendments. Overall, this supplemental analysis does not cause us to change our primary conclusions regarding the potential effects of the amendments.

The economic analysis also considers other changes associated with the amendments. For example, the affected issuers will be permitted an additional 15 days and five days, respectively, after the end of each period to file their annual and quarterly reports, relative to the deadlines that apply to accelerated filers.[279] The amendments also revise the transition provisions for accelerated and large accelerated filer status, including increasing the public float thresholds to exit accelerated and large accelerated filer status from $50 million and $500 million in public float to $60 million and $560 million in public float. Additionally, the amendments introduce a new check-box disclosure on the cover page of annual reports on Forms 10–K, 20–F, and 40–F to indicate whether an ICFR auditor attestation is included in the filing.

The discussion that follows examines the potential benefits and costs of the amendments in detail. As part of our analysis, we consider both the comments received on the Proposing Release and the likelihood that the effects of the ICFR auditor attestation have changed over time with changes in auditing standards and other market conditions.

B. Baseline

To assess the economic impact of the amendments, we are using as our baseline the current state of the market under the existing definition of ''accelerated filer.'' This section discusses the current regulatory requirements and market practices. It also provides statistics characterizing accelerated filers, the timing of filings, disclosures about ineffective ICFR, and restatement rates under the baseline.

1. Regulatory Baseline

Our baseline includes existing statutes and Commission rules that govern the responsibilities of issuers with respect to financial reporting, as well as PCAOB auditing standards and market standards related to the implementation of these responsibilities.

In particular, accelerated and large accelerated filers are subject to accelerated filing deadlines for their periodic reports relative to non-accelerated filers. These deadlines are summarized in Table 4 below. All registrants can file Form 12b–25 (''Form NT'') to avail themselves of an additional 15 calendar days to file an annual report, or an additional five calendar days to file a quarterly report, and still have their report deemed to have been timely filed.

TABLE 4—FILING DEADLINES FOR PERIODIC REPORTS

Category of filer	Calendar days after period end	
	Annual	Quarterly
Non-Accelerated Filer	90	45
Accelerated Filer	75	40
Large Accelerated Filer	60	40

The Proposing Release discusses in detail the issuer and auditor responsibilities with respect to disclosure controls and procedures and ICFR for issuers of different filer types.[280] These responsibilities derive from the FCPA requirements with respect to internal accounting controls as well as a number of different changes to financial reporting that were introduced by SOX.

In particular, all issuers [281] are required to devise and maintain an adequate system of internal accounting controls [282] and to have their corporate officers assess the effectiveness of the issuer's disclosure controls and procedures [283] and disclose the conclusions of their assessments, typically on a quarterly basis.[284] In addition, all issuers are required to have their corporate officers certify in each of their periodic reports that the information in the report fairly presents, in all material respects, the issuer's financial condition and results of operations.[285] All issuers other than RICs and asset-backed securities (''ABS'') issuers [286] are also required to include management's assessment of the effectiveness of their ICFR in their annual reports.[287] Further, all issuers are required to have the financial statements in their annual reports examined and reported on by an independent auditor, who, even if not engaged to provide an ICFR auditor attestation, is responsible for considering ICFR in the performance of the financial statement audit.[288] Also, an auditor engaged in a financial statement only audit may test the operating effectiveness of some internal controls in order to reduce the extent of substantive testing performed in the audit. Importantly, all of these responsibilities with respect to financial reporting and ICFR apply equally to

[277] *See, e.g.,* letters from CFA Inst., CII, and Prof. Barth *et al.*

[278] *See, e.g.,* letter from CFA, CFA Inst., CII and Prof. Barth *et al.*

[279] Non-accelerated filers also are not required to provide disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports or disclosure required by Item 101(e)(4) of Regulation S–K about whether they make filings available on or through their internet websites.

[280] See Sections II.B. and III.B.1. of the Proposing Release, note 4 above.

[281] Specifically, the requirements apply to all issuers that file reports pursuant to Section 13(a) or 15(d) of the Exchange Act.

[282] *See* Section 13(b)(2)(B) of the Exchange Act.

[283] *See* note 209 above.

[284] *See* note 210 above.

[285] *See* 17 CFR 240.13a–14(b) and 17 CFR 240.15d–14(b).

[286] *See* 17 CFR 240.13a–15 and 17 CFR 240.15d–15. A newly public issuer is also not required to provide a SOX Section 404(a) management report on ICFR until its second annual report filed with the Commission. *See* Instructions to Item 308 of Regulation S–K.

[287] *See Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,* Release No. 33–8238 (June 5, 2003) [68 FR 36635 (June 18, 2003)]. These evaluations of ICFR, as well as any associated ICFR auditor attestations, should be based on a suitable, recognized control framework. The most widely used framework for this purpose is the one set forth in a report of the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'').

[288] *See* PCAOB AS 2110, note 187 above. *See also* the discussion below in this section about this auditing standard.

non-accelerated as well as accelerated and large accelerated filers. Finally, all issuers listed on national exchanges are required to have an audit committee that is composed solely of independent directors and is directly responsible for the appointment, compensation, retention and oversight of the issuer's independent auditors.[289] The amendments do not change any of these requirements, including the requirements of a financial statement audit.

Beyond these requirements, accelerated filers and large accelerated filers other than EGCs, RICs, and ABS issuers are required under SOX Section 404(b) and related rules to include an ICFR auditor attestation in their annual reports. In addition, certain banks, even if they are non-accelerated filers, are required under Federal Deposit Insurance Corporation (''FDIC'') rules to have their auditor attest to, and report on, management's assessment of the effectiveness of the bank's ICFR (the ''FDIC auditor attestation requirement'').[290]

One commenter raised questions about the nature of the FDIC auditor attestation requirement and how it compares to the ICFR auditor attestation requirement.[291] For banks that are subject to the ICFR auditor attestation requirement, the FDIC regulations require ICFR attestation engagements to be performed according to the same standards as the ICFR auditor attestation requirement under SOX Section 404(b) (*i.e.,* AS 2201,[292] as discussed below).[293] For other banks, the FDIC allows ICFR attestations to be performed either according to AS 2201 or according to the American Institute of Certified Public Accountants (''AICPA'') attestation standard.[294] In 2015, the Auditing Standards Board of the AICPA issued Statement on Auditing Standards (''SAS'') No. 130, revising their attestation standard with the intention of adhering as closely as possible to AS 2201 while aligning with their generally accepted auditing standards and avoiding unintended consequences in practice.[295] The FDIC also requires that the attestation reports be made available for public inspection (at the bank's main and branch offices or, alternatively, by mail to anyone who requests it).[296] Per Section IV.B.4 below, material weaknesses reported in SOX Section 404(a) reports and the corresponding SOX Section 404(b) reports typically mirror each other, so material weaknesses identified by the FDIC auditor attestation may also become publicly known via corresponding SOX Section 404(a) management reports. Finally, we note that FDIC and Federal Reserve examiners may also independently review and assess the adequacy of ICFR of banks.

Some issuers that are not required to comply with SOX Section 404(b) voluntarily obtain an ICFR auditor attestation.[297] Estimates of the number of issuers of each filer type are provided in Table 5 below.[298]

TABLE 5—FILER STATUS FOR ISSUERS FILING ANNUAL REPORTS IN 2018

	Non-accelerated *	Accelerated	Large accelerated
FPI	265	137	264
EGC	1,097	333	0
Total	3,900	1,416	2,266

* The estimated number of non-accelerated filers includes approximately 621 ABS issuers, which are not required to comply with SOX Section 404. Staff estimates that very few, if any, ABS issuers are accelerated or large accelerated filers. ABS issuers are identified as issuers that made distributions reported via Form 10–D.

[289] *See* 17 CFR 240.10A–3. In the absence of an ICFR auditor attestation requirement, we note that the audit committee is responsible for approving whether to voluntarily obtain an ICFR auditor attestation, and would be alerted by the auditor engaged in a financial statement only audit if the auditor becomes aware of a significant deficiency or material weakness in ICFR.

[290] Part 363 of the FDIC regulations requires that the auditor of an insured depository institution with consolidated total assets of $1 billion or more (as of the beginning of the fiscal year) examine, attest to, and report separately on the assertion of management concerning the effectiveness of the institution's internal control structure and procedures for financial reporting.

[291] *See* letter from CFA Inst.

[292] *See* AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements* (''AS 2201'').

[293] *See* Section 18A of Appendix A to Part 363 of the FDIC regulations.

[294] *Id.*

[295] *See* Executive Summary to SAS 130 (October 2015), available at *https://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/SAS_130_Summary.pdf*.

[296] *See* Section 363.4 of Part 363 of the FDIC regulations.

[297] Up to about seven percent of exempt issuers voluntarily provided an ICFR auditor attestation from 2005 through 2011. *See* 2013 GAO Study, note 246 above. We find similar results when examining data for non-accelerated filers and EGCs in calendar years 2014 through 2018 from Ives Group Audit Analytics to identify, among issuers of these types that have a SOX Section 404(a) management report, how many also have an ICFR auditor attestation report available in the database. *See* note 298 below regarding the identification of filer types.

[298] The estimates in this table are based on staff analysis of self-identified filer status for issuers filing annual reports on Forms 10–K, 20–F, or 40–F in calendar year 2018, excluding any such filings that pertain to fiscal years prior to 2017. Staff extracted filer status from filings using a computer program supplemented with hand collection and compared the results for robustness with data from XBRL filings, Ives Group Audit Analytics, and Calcbench. FPIs represent those filing on Forms 20–F or 40–F and do not include FPIs that choose to file on Form 10–K. EGC issuers are identified by using data from Ives Group Audit Analytics and/or by using a computer program to search issuer filings, including filings other than annual reports, for a statement regarding EGC status. The estimates generally exclude RICs because these issuers do not file on the annual report types considered. This table also excludes 143 issuers, mostly Canadian MJDS issuers filing on Form 40–F (which does not require disclosure of filer status or public float), for which filer type is unavailable.

Audits of ICFR and the associated ICFR auditor attestation reports are made in accordance with AS 2201,[299] previously known as Auditing Standard Number 5 (''AS No. 5'').[300] This standard, which replaced Auditing Standard Number 2 (''AS No. 2'') in 2007, was intended to focus auditors on the most important matters in the audit of ICFR and eliminate procedures that the PCAOB believed were unnecessary to an effective audit of ICFR.[301] Among other things, the 2007 standard facilitates the scaling of the evaluation of ICFR for smaller, less complex issuers by, for example, encouraging auditors to use top-down risk-based approaches and to use the work of others in the attestation process.[302] It was accompanied by Commission guidance similarly facilitating the scaling of SOX Section 404(a) management evaluations of ICFR.[303]

The adoption of AS 2201 in 2007 has been found to have lowered audit fees.[304] However, several studies have provided evidence that, at least initially, after the adoption of AS 2201, the quality of ICFR of issuers subject to the ICFR auditor attestation requirement decreased relative to that of other issuers.[305] Around 2010, PCAOB inspections of auditors began to include a heightened focus on whether auditing firms had obtained sufficient evidence to support their opinions on the effectiveness of ICFR.[306] There is some evidence that these inspections have led to an improvement in the reliability of ICFR auditor attestations,[307] but also concerns that audit fees also increased around the same time.[308]

In 2010, the PCAOB adopted enhanced auditing standards related to the auditor's assessment of and response to risk.[309] The enhanced risk assessment standards have likely reduced, to some extent, the degree of difference between a financial statement only audit and an integrated audit (which includes an audit of ICFR) because the standards clarify and augment the extent to which internal controls are to be considered even in a financial statement only audit. In particular, the risk assessment standards applying to both types of audits require auditors, in either case, to evaluate the design of certain controls, including whether the controls are implemented.[310]

Based on the results of inspections in the several years after the adoption of the new risk assessment auditing standards, the PCAOB expressed concern about the number and significance of deficiencies in auditing firm compliance with these standards, but also noted promising improvements in the application of these standards.[311] While the risk assessment standards may reduce the degree of difference between a financial statement only audit and an integrated audit, there remain important differences in the requirements of these audits as they relate to controls. For example, in an integrated audit, but not a financial statement only audit, the auditor is required to identify likely sources of misstatements in considering the evaluation of ICFR.[312] Also, the extent of the procedures necessary to obtain the required understanding of controls generally will be greater in an integrated audit due to the different objectives of such an audit as compared to a financial statement only audit.[313]

The Commission recently settled charges against four public companies for failing to maintain effective ICFR for seven to 10 consecutive annual reporting periods.[314] These enforcement cases may have a deterrent effect among issuers failing to remediate material weaknesses, which might reduce the overall rate of persistence of material weaknesses in ICFR.

We also note that there have been some recent changes in accounting and auditing that are part of our baseline and could increase the uncertainty of our analysis due to their effects on factors such as audit fees, restatements, and ICFR. For example, three new reporting standards have been issued recently by FASB, on the topics of revenue recognition, leases, and credit losses, which could temporarily increase audit fees as issuers and auditors adjust to the new standards.[315] Recent changes in technology, such as the potential for management to use automated controls testing and process automation,[316] may result in improvements in ICFR regardless of the ICFR auditor attestation requirement if their increased application results in more robust financial reporting processes with fewer opportunities for deficiencies and/or in an increase by

[299] *See* note 292 above.

[300] AS No. 5 was renumbered as AS 2201, note 292 above, effective Dec. 31, 2016. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Release No. 2015–002 (Mar. 31, 2015).

[301] *See Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements, and Related Independence Rule and Conforming Amendments,* PCAOB Release No. 2007–005A (June 12, 2007). *See also Public Company Accounting Oversight Board; Order Approving Proposed Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements, a Related Independence Rule, and Conforming Amendments,* Release No. 34–56152, File No. PCAOB 2007–02 (July 27, 2007) [72 FR 42141 (Aug. 1, 2007)].

[302] *Id.*

[303] *See Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934,* Release No. 33–8810 (June 20, 2007) [72 FR 35323 (June 27, 2007)]. *See also Amendments to Rules Regarding Management's Report on Internal Control Over Financial Reporting,* Release No. 33–8810 (June 20, 2007) [72 FR 35309 (June 27, 2007)].

[304] *See, e.g., Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements* (Sept. 2009) (''2009 SEC Staff Study''), available at *https://www.sec.gov/news/studies/2009/sox-404_study.pdf*; Rajib Doogar, Padmakumar Sivadasan, & Ira Solomon, 48(4) J. of Acct. Res. 795 (2010).

[305] *See, e.g.,* Joseph Schroeder & Marcy Shepardson, *Do SOX 404 Control Audits and Management Assessments Improve Overall Internal Control System Quality?,* 91(5) Acct. Rev. 1513 (2016) (''Schroeder and Shepardson 2016 Study''); Lori Bhaskar, Joseph Schroeder, & Marcy Shepardson, *Integration of Internal Control and Financial Statement Audits: Are Two Audits Better than One?* Acct. Rev. (forthcoming 2018) (''Bhaskar *et al.* 2018 Study''), available at *http://aaajournals.org/doi/abs/10.2308/accr-52197. See* Section IV.C.3.a. and notes 464 and 474 below for more information on these studies.

[306] *See* Jeanette Franzel, Board Member, PCAOB, Speech by PCAOB board member at the American Accounting Association Annual Meeting, *Current Issues, Trends, and Open Questions in Audits of Internal Control over Financial Reporting* (2015), available at *https://pcaobus.org/News/Speech/Pages/08102015_Franzel.aspx.*

[307] *See* Mark Defond & Clive Lennox, *Do PCAOB Inspections Improve the Quality of Internal Control Audits?,* 55(3) J. OF ACCT. RES. 591 (2017) (''Defond and Lennox 2017 Study'').

[308] *See, e.g.,* Tammy Whitehouse, *Audit Inspections: Improvement? Maybe. Costs? Yes,* Compliance Week (April 14, 2015), available at *https://www.complianceweek.com/news/news-article/audit-inspections-improvement-maybe-costs-yes#.W5LW7mlpCEd*; and Jennifer McCallen, Roy Schmardebeck, Jonathan Shipman, & Robert Whited, *Have the Costs and Benefits of SOX Section 404(b) Compliance Changed Over Time?,* Working Paper (Nov. 2019), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420787* (''McCallen *et al.* 2019 study'').

[309] *See* PCAOB Release No. 2010–004 and PCAOB Release No. 2010–01, note 193 above.

[310] *See* AS 2110, paragraphs .18–.40, note 187 above.

[311] *See* PCAOB Release No. 2015–007, note 195 above.

[312] *See* PCAOB Release No. 2010–004, note 309 above, at 7 and A10–41. As discussed above, even in a financial statement only audit, if the auditor becomes aware of a significant deficiency or material weakness in ICFR, it is required to inform management and the audit committee of this finding and has the responsibility to review management's disclosure for any misstatement of facts, such as a statement that ICFR is effective when there is a known material weakness. *See* notes 190 to 191 above and the accompanying text.

[313] *See Proposed Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Conforming Amendments to PCAOB Standards,* PCAOB Release No. 2008–006 A9–8 (Oct. 21, 2008).

[314] *See* SEC Press Release, note 196 above.

[315] Information on these and other FASB Accounting Standards updates is available at *https://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176156316498.*

[316] *See, e.g.,* Robotic Process Automation, note 197 above.

management in control testing and related improvements. Such automation could also reduce audit fees, including the costs of an audit of ICFR, but at least one report suggests that the uptake of these technologies has been slow.[317] Finally, auditors have had many years of experience with integrated audits, as well as risk assessment standards that require the consideration of ICFR even in the absence of an ICFR auditor attestation. This experience may affect their execution of financial statement only audits of issuers for whom the ICFR auditor attestation requirement is eliminated. For example, given their experience, auditors may be more likely to detect control deficiencies or to increase their auditing efficiency by reducing substantive testing in favor of testing some related controls even when an ICFR auditor attestation is not required.[318]

2. Characteristics of Accelerated Filer Population

Per Table 5, there were approximately 1,400 accelerated filers in total in 2018. Figure 2 [319] presents the distribution of public float across these issuers.[320]

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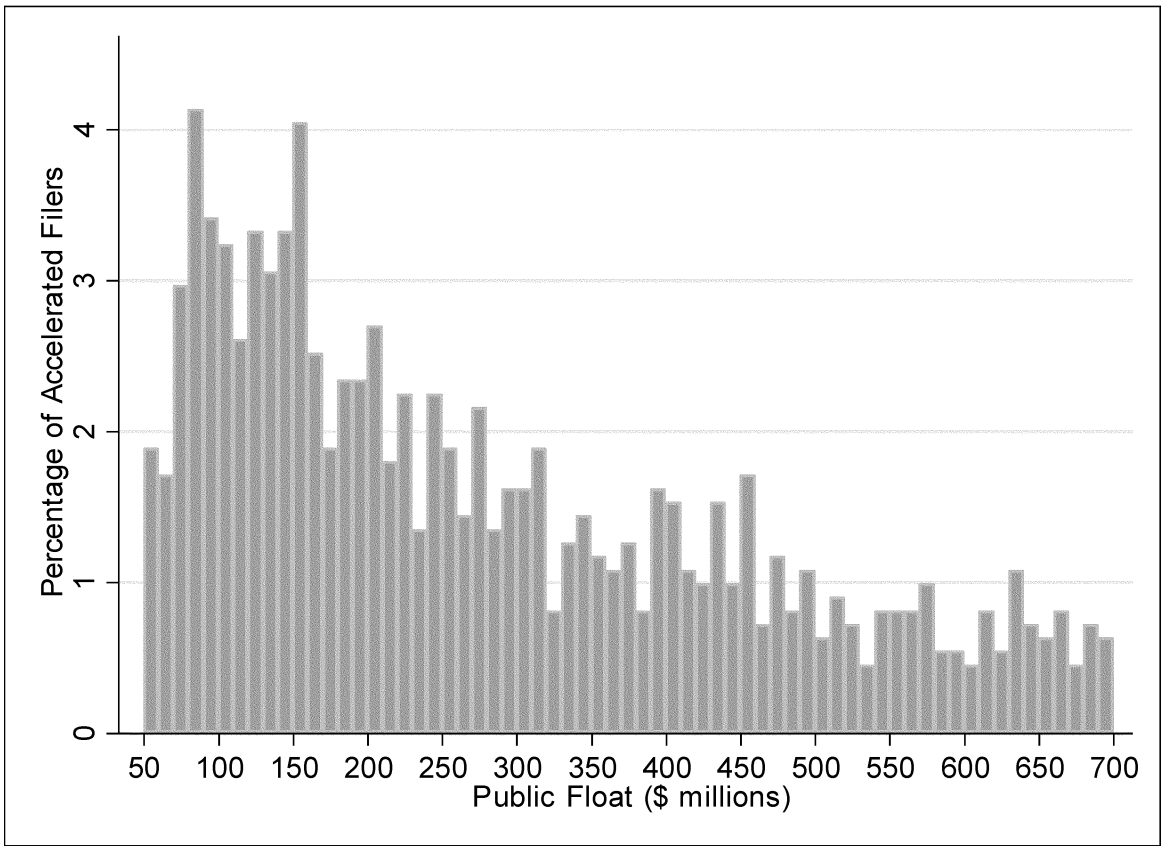
Figure 2. Distribution of public float of accelerated filers in 2018



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The distribution of public float among accelerated filers is skewed towards lower levels of float, but higher levels of float are also significantly represented.

Figure 3 [321] presents the distribution of revenues across those accelerated filers that have less than $1 billion in revenues. While the full population of accelerated filers has revenues of up to over $20 billion, about 90 percent of accelerated filers have less than $1 billion in revenues. We restrict the figure to this subset in order to more clearly display the distribution in this range.

[317] *See, e.g.,* Protiviti survey results, *Benchmarking SOX Costs, Hours and Controls* (2018) (''Protiviti 2018 Report'').

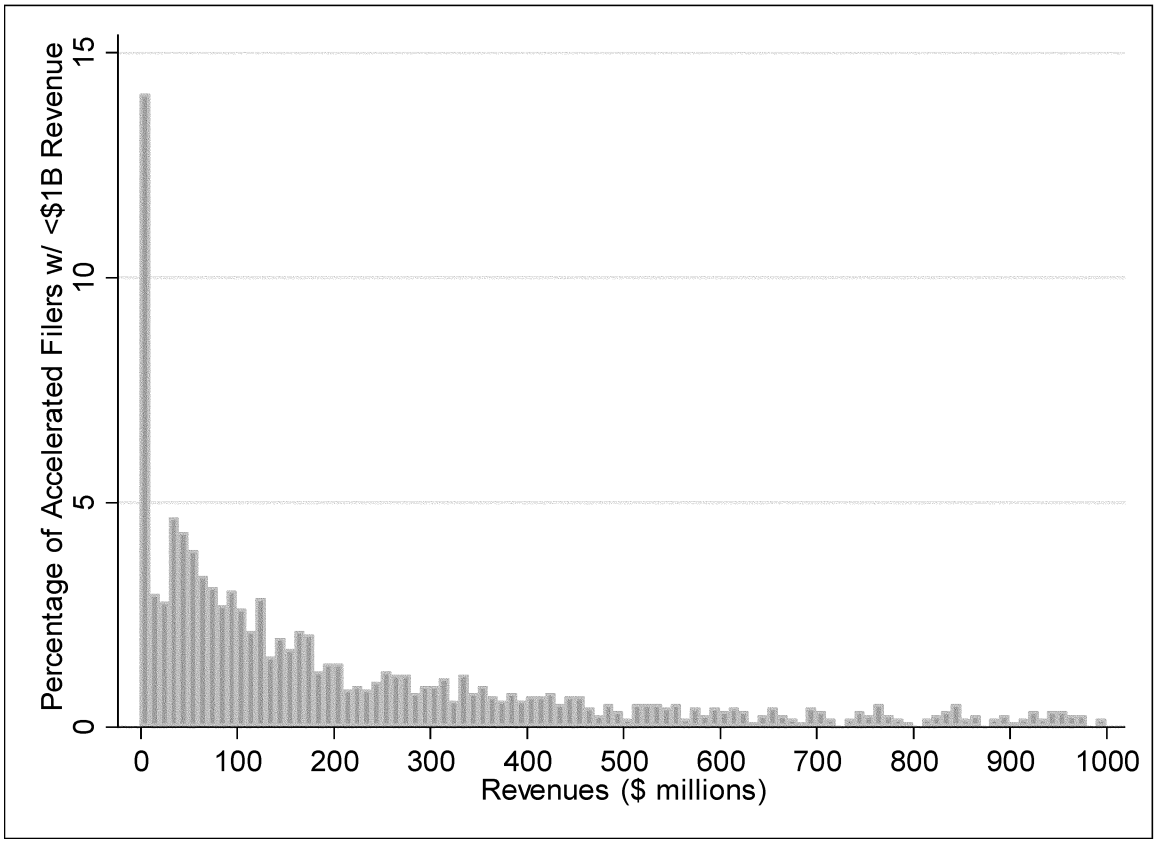
[318] 2011 SEC Staff Study, note 198 above, (stating that ''. . . once effective controls are in place at the issuer, the auditor is more likely to continue to test them even if [it is] not issuing an auditor attestation during a particular year in order to rely on them for purposes of reducing substantive testing in the audit of the financial statements, particularly for issuers that are larger and more complex'').

[319] The estimates in the figure are based on staff analysis of data from XBRL filings. *See* note 298 above for details on the identification of the population of accelerated filers.

[320] Because of the accelerated filer transition provisions, some accelerated filers have float below $75 million. The public float of these issuers would previously have exceeded $75 million, causing them to enter accelerated filer status, but has not dropped below the $50 million public float level required to exit accelerated filer status.

[321] The estimates of revenues are based on staff analysis of data from XBRL filings, Compustat, and Calcbench. The revenue data used is from the last fiscal year prior to the annual report in calendar year 2018, because the SRC revenue test is based on the prior year's revenues. *See* note 298 above for details on the identification of the population of accelerated filers.

Figure 3. Distribution of prior fiscal year revenues of accelerated filers in 2018, amongst those with less than $1 billion in such revenues



The distribution of revenues for accelerated filers is heavily skewed towards lower levels of revenue, with roughly three-quarters of accelerated filers having revenues of less than $500 million and more than a third having revenues of less than $100 million. Other than a clustering of issuers with zero or near zero revenues, there are no obvious breaks in the distribution.

While a large range of industries are represented among accelerated filers, a small number of industries account for the majority of these issuers. The ''Banking'' industry accounts for about 14.1 percent of accelerated filers, followed by ''Pharmaceutical Products'' (13.9 percent) ''Financial Trading'' (8.0 percent), ''Business Services'' (5.7 percent), ''Petroleum and Natural Gas'' (4.8 percent), ''Computer Software'' (4.4 percent), ''Retail'' (4.4 percent), ''Transportation'' (4.2 percent), and ''Electronic Equipment'' (4.1 percent).[322]

3. Timing of Filings

As discussed above, non-accelerated, accelerated, and large accelerated filers face different filing deadlines for their periodic reports. In Table 6, we present the timing in recent years of annual report filings by these different groups of issuers relative to their corresponding deadlines.[323]

TABLE 6—FILING TIMING FOR ANNUAL REPORTS IN YEARS 2014 THROUGH 2018, BY FILER STATUS

	Non-accelerated	Accelerated	Large accelerated
Annual report filing deadline	90 days	75 days	60 days.
Average days to file	101 days	70 days	56 days.
Percentage filed:			
By deadline	72%	91%	94%.
Over 5 days early	44%	63%	61%.
After deadline	28%	9%	6%.
Over 15 days after deadline	13%	5%	4%.

[322] These estimates are based on staff analysis of data including SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. *See http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html. See* note 298 above for details on identification of population of accelerated filers.

[323] The estimates in this table are based on staff analysis of EDGAR filings. These statistics include all annual reports on Forms 10–K, 20–F, and 40–F filed in calendar years 2014 through 2018 other than amendments. If multiple annual reports (excluding amendments) are filed in the same calendar year, the analysis considers only the latest such filing. Given the effect of weekends and holidays, filings are considered to be on time if within two calendar days after the original deadline. The ''5 days early'' and ''over 15 days after'' categories are similarly adjusted to account for the possible effect of weekends and holidays. *See* note 298 above for details on the identification of filer type.

Table 6 documents that accelerated and large accelerated filers file their annual reports, on average, four or five days before the applicable deadline. Nine percent and six percent, respectively, of accelerated and large accelerated filers submit their annual reports after the initial deadline, with roughly half of these filers surpassing the 15-day grace period that is obtained by filing Form NT. Non-accelerated filers are less likely to meet their initial deadline or extended deadline, with the average non-accelerated filer submitting its annual report 11 days after the initial deadline and 13 percent of non-accelerated filers filing after the 15-day grace period obtained by filing Form NT.

4. Internal Controls and Restatements

We next consider the current rates of ineffective ICFR and restatements [324] among issuers that are accelerated filers under the baseline relative to other filer types. The data for all years of the analysis has been updated relative to the analysis in the Proposing Release.[325] Throughout our analysis, we use the term restatement to refer to a restatement that is associated with some type of misstatement. As discussed above, non-accelerated filers and EGCs are statutorily exempted from the ICFR auditor attestation requirement. Table 7 presents the percentage of issuers reporting ineffective ICFR in recent years by filer type.[326]

TABLE 7—PERCENTAGE OF ISSUERS REPORTING INEFFECTIVE ICFR

Ineffective ICFR year reported in	Non-accelerated (%)	Accelerated (%)	Large accelerated (%)
Management Report:			
2014	40.1	7.8	3.2
2015	41.2	9.2	3.8
2016	38.3	9.5	4.6
2017	40.2	9.2	5.0
2018	40.3	8.9	3.8
Average/year	*40.0*	*8.9*	*4.1*
Auditor Attestation:			
2014	n/a	8.0	3.3
2015	n/a	9.1	3.8
2016	n/a	9.0	4.6
2017	n/a	9.4	4.9
2018	n/a	8.7	3.8
Average/year	*n/a*	*8.8*	*4.1*

Based on management's SOX Section 404(a) reports on ICFR from recent years, on average, about nine percent of accelerated filers reported at least one material weakness in ICFR in a given year.[327] This represents a moderately higher rate than that among large accelerated filers, approximately four percent, on average, of which reported ineffective ICFR,[328] and a substantially lower rate than that among non-accelerated filers, more than a third of which reported ineffective ICFR each year.[329] For issuers subject to the ICFR auditor attestation requirement, the rates of ineffective ICFR reported by management and by auditors are similar.[330] This may not be surprising, as management will be made aware of any material weaknesses discovered by the auditor and vice versa.

We next consider the persistence of material weaknesses across these issuer categories. Table 8 [331] presents the percentage of issuers that reported two, three, or four consecutive years of ineffective ICFR culminating in 2018, by filer type.[332]

[324] Unless otherwise specified, statistics and analysis regarding restatements are not restricted to those restatements requiring Form 8–K Item 4.02 disclosure.

[325] Previous years of data may be revised due to, for example, newly disclosed restatements that reflect misstatements in these earlier years, restated internal control reports that relate to previous fiscal years, previously incomplete data that was later populated, or other updates or database changes.

[326] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. ICFR effectiveness is based on the last amended management or auditor attestation report for the fiscal year. Percentages are computed out of all issuers of a given filer type with the specified type of report available in the Ives Group Audit Analytics database. *See* note 298 above for details on the identification of filer type.

[327] Per the second column of the first panel of Table 7, the rate of ineffective ICFR among accelerated filers has ranged from 7.8 to 9.5 percent for the years 2014 through 2018, for an average per year of 8.9 percent.

[328] Per the third column of the first panel of Table 7, the rate of ineffective ICFR among large accelerated filers has ranged from 3.2 to 5.0 percent for the years 2014 through 2018, for an average per year of 4.1 percent.

[329] Per the first column of the first panel of Table 7, the rate of ineffective ICFR among non-accelerated filers has ranged from 38.3 to 41.2 percent for the years 2014 through 2018, for an average per year of 40.0 percent.

[330] Per the second column of Table 7, the average rate of ineffective ICFR for accelerated filers across years 2014 through 2018 was 8.9 percent as reported in management reports and 8.8 percent as reported in auditor reports. Similarly, per the third column of Table 7, the average rate of ineffective ICFR for large accelerated filers across years 2014 through 2018 was 4.1 percent as reported in management reports and 4.1 percent as reported in auditor reports.

[331] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. ICFR effectiveness is based on the last amended management report for the fiscal year. Percentages in the first panel are computed out of all issuers of a given filer type in 2018 with SOX Section 404(a) management reports available in Ives Group Audit Analytics database, while percentages in the second panel are computed out of issuers of a given filer type reporting ineffective ICFR in their SOX Section 404(a) management report for 2018. *See* fourth row of Table 7 and note 298 above for details on the identification of filer type.

[332] One commenter noted that the Proposing Release, note 4 above, indicated that over 68 percent of non-accelerated filers have reported two consecutive years of ineffective ICFR and over 38 percent have reported four consecutive years of ineffective ICFR in their annual reports. *See* letter from Better Markets. To clarify, we note that these statistics, like those reported in the second panel of Table 8 below, reflect percentages out of the issuers in each category that maintained ineffective ICFR in the last year of the analysis, not percentages of all issuers in each category.

TABLE 8—PERCENTAGE OF ISSUERS REPORTING CONSECUTIVE YEARS OF INEFFECTIVE ICFR IN MANAGEMENT REPORT, BY 2018 FILER STATUS

Ineffective ICFR years	Non-accelerated (%)	Accelerated (%)	Large accelerated (%)
Issuers with persistent ineffective ICFR/All issuers:			
2017–2018 (at least 2 years)	28.4	3.5	1.4
2016–2018 (at least 3 years)	20.8	2.0	0.5
2015–2018 (4 years)	16.1	1.0	0.3
Issuers with persistent ineffective ICFR/Issuers with 2018 ineffective ICFR:			
2017–2018 (at least 2 years)	70.4	39.2	36.4
2016–2018 (at least 3 years)	51.6	22.4	14.1
2015–2018 (4 years)	39.9	11.3	7.2

The first panel of Table 8 is intended to demonstrate the overall rate of persistently ineffective ICFR among issuers of different types, while the second panel is intended to demonstrate the degree of persistence of ineffective ICFR among the subset of issuers of each type that report ineffective ICFR in 2018. Compared to non-accelerated filers, we find that a smaller percentage of accelerated and large accelerated filers report material weaknesses that persist for multiple years, with about one percent of accelerated filers and about 0.3 percent of large accelerated filers reporting ineffective ICFR for four consecutive years (per the third row of the table), representing about 11 percent of the accelerated filers and about seven percent of the large accelerated filers that reported ineffective ICFR in 2018 (per the last row of the table). A larger percentage of non-accelerated filers persistently report material weaknesses, with about 16 percent of these issuers (per the third row of the table), or about 40 percent of those reporting ineffective ICFR in 2018 (per the last row of the table), having reported material weaknesses for four consecutive years. As discussed above, it is possible that recent Commission enforcement actions might lead to a reduction in the persistence of material weaknesses in ICFR to the extent that they change issuers' awareness of the risks of longstanding ICFR failures.

Table 9 presents the rate of restatements among each of these filer types, excluding EGCs, and for EGCs separately. For each year, we consider the percentage of issuers that eventually restated the financial statements for that year. The reporting lag before restatements are filed results in a lower observed rate in the later years of our sample, particularly for 2017 (and even more so for 2018, which we do not report for this reason), as issuers may yet restate their results from recent years.[333]

TABLE 9—PERCENTAGE OF ISSUERS ISSUING RESTATEMENTS BY YEAR OF RESTATED DATA

Restated	Non-accelerated (ex. EGCs) (%)	Accelerated (ex. EGCs) (%)	Large accelerated (%)	EGC (%)
Total Restatements:				
2014	10.9	11.9	14.5	17.7
2015	9.2	12.5	12.7	16.0
2016	6.8	9.6	8.9	9.3
2017	6.9	7.5	6.3	8.3
Average/year	*8.5*	*10.4*	*10.6*	*12.8*
8–K Item 4.02 Restatements:				
2014	3.9	3.6	2.4	5.0
2015	3.1	3.6	1.8	4.7
2016	2.4	2.7	1.3	3.0
2017	2.3	2.0	0.7	3.1
Average/year	*2.9*	*2.9*	*1.6*	*3.9*

The first panel of Table 9 presents the percentage of issuers that make at least one restatement, of any type, while the second panel presents those that make at least one restatement requiring Form 8–K Item 4.02 disclosure. The latter type of restatement (''Item 4.02 restatements'') reflects material misstatements, while other restatements deal with misstatements that are considered immaterial. We find that EGCs, which are not subject to the ICFR auditor attestation requirement and generally are also younger issuers than those in the other groups, restate their financial statements at higher rates than other issuers, whether we consider all restatements or only Item 4.02 restatements. For non-accelerated filers, which also are not subject to the ICFR auditor attestation requirement, we find that the percentage of issuers reporting Item 4.02 restatements is similar to, and the rate of all restatements slightly lower than, that for accelerated filers who are subject to the ICFR auditor attestation requirement. We note that there is a greater proportion of low-revenue issuers in the non-accelerated filer category than in other categories, and that, in the Proposing Release, we found such issuers to have lower rates of restatement than other issuers.[334] When, in the Proposing Release, we

[333] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. Percentages are computed out of all issuers of a given filer type with a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. Accelerated and non-accelerated categories exclude EGCs that are in these filer categories. *See* note 298 above for details on the identification of filer type.

[334] *See* Table 14 in the Proposing Release, note 4 above.

separately considered issuers with revenues below $100 million, we found that the accelerated filers in this category are less likely to restate their financial statements than non-accelerated filers in the same revenue category.[335]

C. Discussion of Economic Effects

The costs and benefits of the amendments, including impacts on efficiency, competition, and capital formation, are discussed below. We first address the population and characteristics of issuers that will newly qualify as non-accelerated filers under the amendments, and then introduce certain categories of issuers that are used for comparison purposes. We next discuss the anticipated costs and benefits associated with the proposed change in applicability of the ICFR auditor attestation requirement. Following this discussion, we consider the costs and benefits associated with the proposed changes with respect to filing deadlines, exit thresholds, and other required disclosures. Finally, we consider the relative benefits and costs of the principal reasonable alternatives to the amendments.

1. Affected Issuers

We estimate that the amendments will result in 527 additional issuers being classified as non-accelerated filers, and therefore no longer subject to the filing deadlines and ICFR auditor attestation requirement applicable to accelerated filers.[336] Of these, an estimated 154 issuers are EGCs and are thereby already exempt from the ICFR auditor attestation requirement.[337] Among the total 527 affected issuers, an estimated 492 issuers are accelerated filers (or large accelerated filers that have public float of less than $560 million) that will be newly classified as non-accelerated filers because they have annual revenues of less than $100 million and are eligible to be SRCs.[338] An additional 28 issuers are BDCs that will be newly classified as non-accelerated filers because they are currently accelerated filers (and therefore have public float of less than $700 million) and have annual investment income of less than $100 million.[339] The remaining seven affected issuers are accelerated filers that will be newly classified as non-accelerated filers despite having revenues of at least $100 million because they have a public float of at least $50 million but less than $60 million.[340] Our estimate of the number of affected issuers excludes issuers for which we were unable to determine filer classification or revenues, which could represent up to approximately an additional 30 affected issuers.

Our estimate of the number of affected issuers does not include any FPIs. We estimate that there are no FPIs that file on domestic forms and present their financial statements pursuant to U.S. GAAP, and that also meet the required thresholds and other qualifications to be an affected issuer under the amendments. However, there are an estimated 31 FPIs that file on foreign forms, but otherwise meet the required thresholds and other qualifications. There are also FPIs filing on foreign forms for which we were unable to determine filer classification or revenues, which could represent up to approximately an additional 90 FPIs that file on foreign forms but that may meet the required thresholds and other qualifications.[341] While we do not include these issuers in our counts of the number of affected issuers,[342] some of these 30 to 120 additional issuers might choose to file on domestic forms using U.S. GAAP in order to benefit from the amendments if these benefits, together with other benefits of such a choice (such as the ability to rely on the scaled disclosure accommodations available to SRCs) outweigh the costs of changing their disclosure regime. However, many factors are involved in the choice of a reporting regime, and it is difficult to predict how many of these issuers are likely to change their reporting practices due to the amendments.

As noted above, the total number of affected issuers includes an estimated 154 EGCs (including 152 EGCs with annual revenues or, in the case of BDCs, investment income of less than $100 million and two EGCs that will be affected because they have a public float of at least $50 million but less than $60 million).[343] It also includes an estimated 78 banks with $1 billion or more in total assets that are not EGCs.[344] The estimated 154 EGCs are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b). We estimate that the remaining 373 affected issuers will, including 21 BDCs, be newly exempt from this requirement.[345] Two commenters provided estimates of 382 affected issuers and 385 affected issuers, respectively, as the number of issuers that would be newly exempt from the ICFR auditor attestation requirement under the proposal.[346] While these estimates are largely consistent with our estimate, we note that the commenters' estimates apply some simplifications and use different underlying data sources than our estimate.[347]

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[335] *Id.*

[336] The number of affected issuers is based on staff estimates of: (i) The number of accelerated filers in 2018 that have prior fiscal year revenues of less than $100 million and are eligible to be SRCs (*i.e.,* excluding ABS issuers, RICs, BDCs, subsidiaries of non-SRCs, and FPIs filing on foreign forms or using IFRS) or are BDCs with prior year investment income of less than $100 million; (ii) the number of large accelerated filers in 2018 that have a public float of less than $560 million and prior fiscal year revenues of less than $100 million and are eligible to be SRCs; and (iii) the number of accelerated filers in 2018 that have a public float of at least $50 million but less than $60 million. The estimate of the number of affected issuers does not include large accelerated filers that have a public float of at least $560 million but less than $700 million even though such issuers could become non-accelerated filers under the amendments if they became eligible to be SRCs under the SRC revenue test in the first year the SRC amendments became effective due to the limited horizon of this accommodation. *See* note 252 above (describing the accommodation provided in the SRC Adopting Release). Revenue data is sourced from XBRL filings, Compustat, and Calcbench. Public float data is from XBRL. *See* note 298 above for details on the identification of the population of accelerated and large accelerated filers and other filer types.

[337] *Id.*

[338] *Id.*

[339] *Id.*

[340] *Id.*

[341] The majority of these potential additional issuers are Canadian MJDS filers that are not required to disclose filer type or public float. *See* note 298 above.

[342] In the Proposing Release, note 4 above, we included FPIs that file on foreign forms, but otherwise meet the required thresholds and other qualifications, in the number of affected issuers. While these issuers could become subject to the amendments by changing their reporting regime, it is difficult to predict how many would do so and therefore, to be conservative, we do not include them in the number of affected issuers in this release.

[343] *See* note 336 above.

[344] Banks are identified as issuers with SIC codes of 6020 (commercial banks), 6021 (national commercial banks), 6022 (state commercial banks), 6029 (NEC commercial banks), 6035 (savings institutions, federally-chartered) or 6036 (savings institutions, not federally-chartered).

[345] Of these 373 issuers, 368 had less than $100 million in revenues (or, in the case of BDCs, investment income) in their last fiscal year, while the remaining five would be affected despite having greater revenues because of the revised transition provisions (*i.e.,* because their public float is at least $50 million but less than $60 million).

[346] *See* letters from CFA Inst. and Prof. Barth *et al. See also* letter from Nasdaq, estimating that at least 399 Nasdaq-listed companies may be affected by the amendments.

[347] For example, neither commenter excludes from its estimate issuers that are not eligible to be SRCs or adjusts for the effect of the revised transition thresholds as described in note 336 above and note 151 of the Proposing Release, note 4 above. The letter from CFA Inst. appears to rely on a footnote in the Proposing Release that, while citing to the correct definitions of EGC in our rules, incorrectly stated that an EGC is an issuer that has total annual gross revenues of ''less than $1.07 million'' during its most recently completed fiscal year (rather than the correct threshold of ''less than $1.07 billion'') and did not identify the other requirements to be an EGC (such as not having reached the last day of the fiscal year following the

Of the 373 issuers that will be newly exempt from the ICFR auditor attestation requirement, we estimate that the 78 banks identified above will be subject to the FDIC auditor attestation requirement,[348] while the remaining 295 issuers will not be subject to any such auditor attestation requirement.[349] For the banks that will be newly exempt from the ICFR auditor attestation requirement but will remain subject to the FDIC auditor attestation requirement, the benefits and costs of expanding the exemption from the ICFR auditor attestation requirement are both expected to be limited. As discussed in Section IV.B.1. above, the FDIC auditor attestation requirement is substantively similar to the ICFR auditor attestation requirement, and is thus expected to require similar expenditures and have similar financial reporting benefits as the ICFR auditor attestation.

We estimate that approximately 90 percent of the affected issuers (whether including or excluding EGCs) have securities that are listed on national exchanges.[350] The representation in public markets of issuers similar to the affected issuers has decreased relative to the years before SOX. In particular, over the past two decades, the number of issuers listed on major exchanges has decreased by about 40 percent,[351] but the decline has been concentrated among smaller size issuers. Specifically, the number of listed issuers with market capitalization below $700 million has decreased by about 65 percent,[352] and the number of listed issuers with less than $100 million in revenue has decreased by about 60 percent.[353] One commenter noted that these statistics do not establish that the costs of the ICFR auditor attestation materially contributed to the decline in listed issuers, and that there are a number of other factors that are likely implicated in the decline of listings.[354] We cite these statistics to characterize the affected issuers, not to attribute the decline in listings to any particular cause. As noted below, the amendments could be a positive factor in the decision of additional companies to enter public markets, but it may not be the decisive factor, and the direct impact of the amendments on the number of public companies may be limited to the extent that companies may be more focused on other factors associated with the decision to go public.[355]

Figure 4 [356] presents the distribution of public float across the full sample of affected issuers.[357]

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fifth anniversary of the date of the first sale of common equity securities of the issuer under an effective Securities Act registration statement as an EGC). *See* footnote 47 of the Proposing Release, note 4 above. The estimate in the letter from CFA Inst. also excluded all 10–K filers with the SIC code 6200 (''Security & Commodity Brokers, Dealers, Exchanges & Services''), which we do not believe is appropriate. While the letter correctly indicates that the ICFR auditor attestation requirement does not apply to audits of brokers and dealers performed pursuant to SEC Rule 17a–5, these audits apply to the reports required by Rule 17a–5, which are distinct from a Form 10–K filing. Issuers filing Form 10–Ks that have a subsidiary that is a broker or dealer are not treated differently from other issuers with respect to the ICFR auditor attestation requirement.

[348] If these banks are no longer subject to the SOX Section 404(b) auditor attestation requirement, their auditors may follow the AICPA's auditing standards in lieu of the PCAOB's auditing standards for the FDIC auditor attestation. *See* Section 18A of Appendix A to FDIC Rule 363 and the AICPA's AU–C Section 940. *See also* Section III.B.1. above.

[349] Of these 274 issuers, 269 are accelerated filers (or large accelerated filers that have public float of less than $560 million) that will be newly classified as non-accelerated filers because they have annual revenues of less than $100 million and are eligible to be SRCs, while the remaining five will be newly classified as non-accelerated filers despite having revenues of at least $100 million because they have a public float of at least $50 million but less than $60 million.

[350] Staff extracted information regarding whether issuers reported having securities registered under Section 12(b) of the Exchange Act from the cover page of annual report filings using a computer program supplemented with hand collection. *See* note 336 above for details on the identification of the population of affected issuers.

[351] This estimate is based on staff analysis of data from the Center for Research in Security Prices database for December 1998 versus December 2018. The estimate excludes RICs and issuers of ADRs.

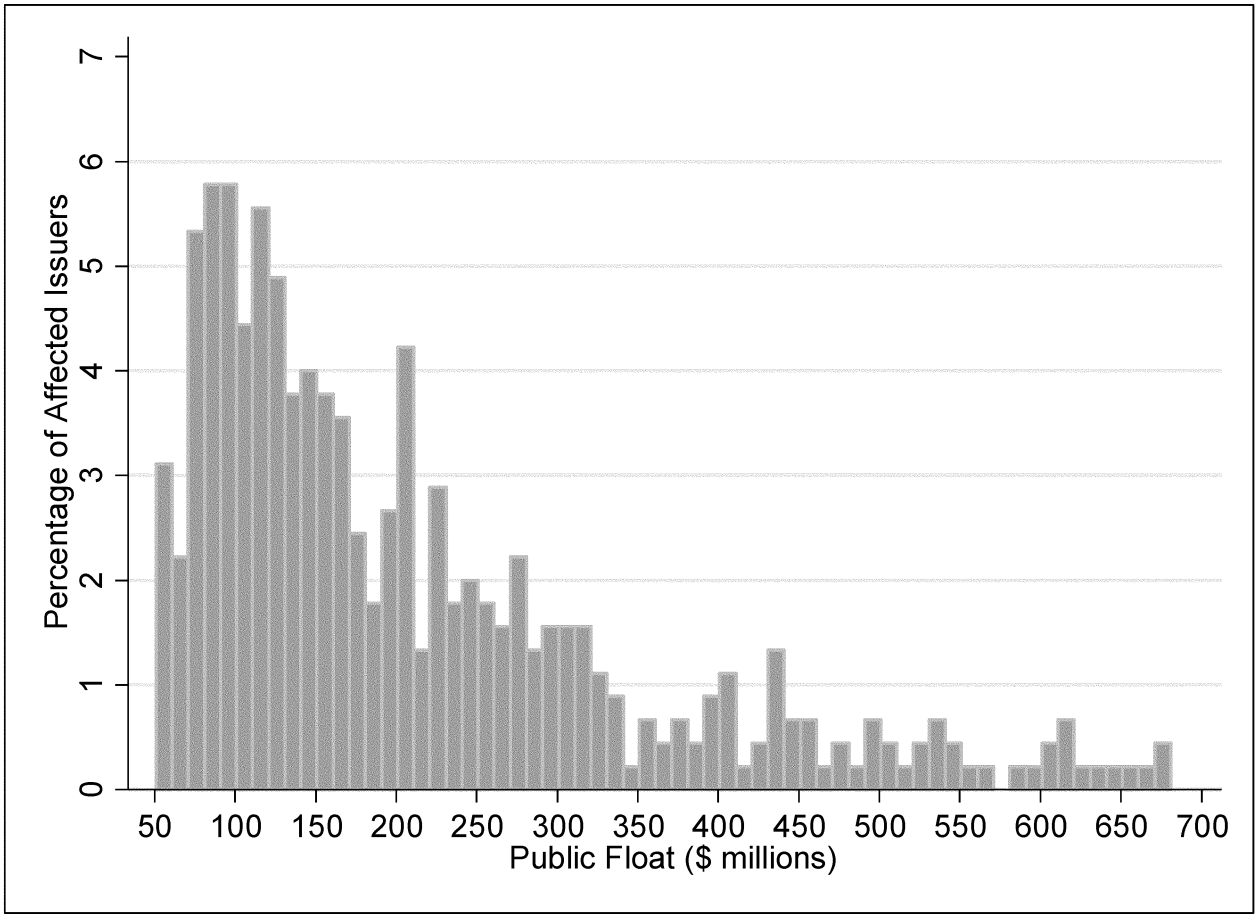
[352] *Id.*

[353] This estimate is based on staff analysis of data from Standard & Poor's Compustat and Center for Research in Security Prices databases for fiscal year 1998 versus fiscal year 2017. The estimate excludes RICs and issuers of ADRs.

[354] *See* letter from CFA.

[355] *See* Section IV.C.2.d. below.

Figure 4. Distribution of public float of affected issuers based on classification in 2018



Relative to the distribution for all accelerated filers presented in Figure 2, the sample of affected issuers is more strongly skewed toward lower levels of public float, with higher levels of public float only thinly represented. However, some of the affected issuers do have public float approaching the top of the range for accelerated filers.

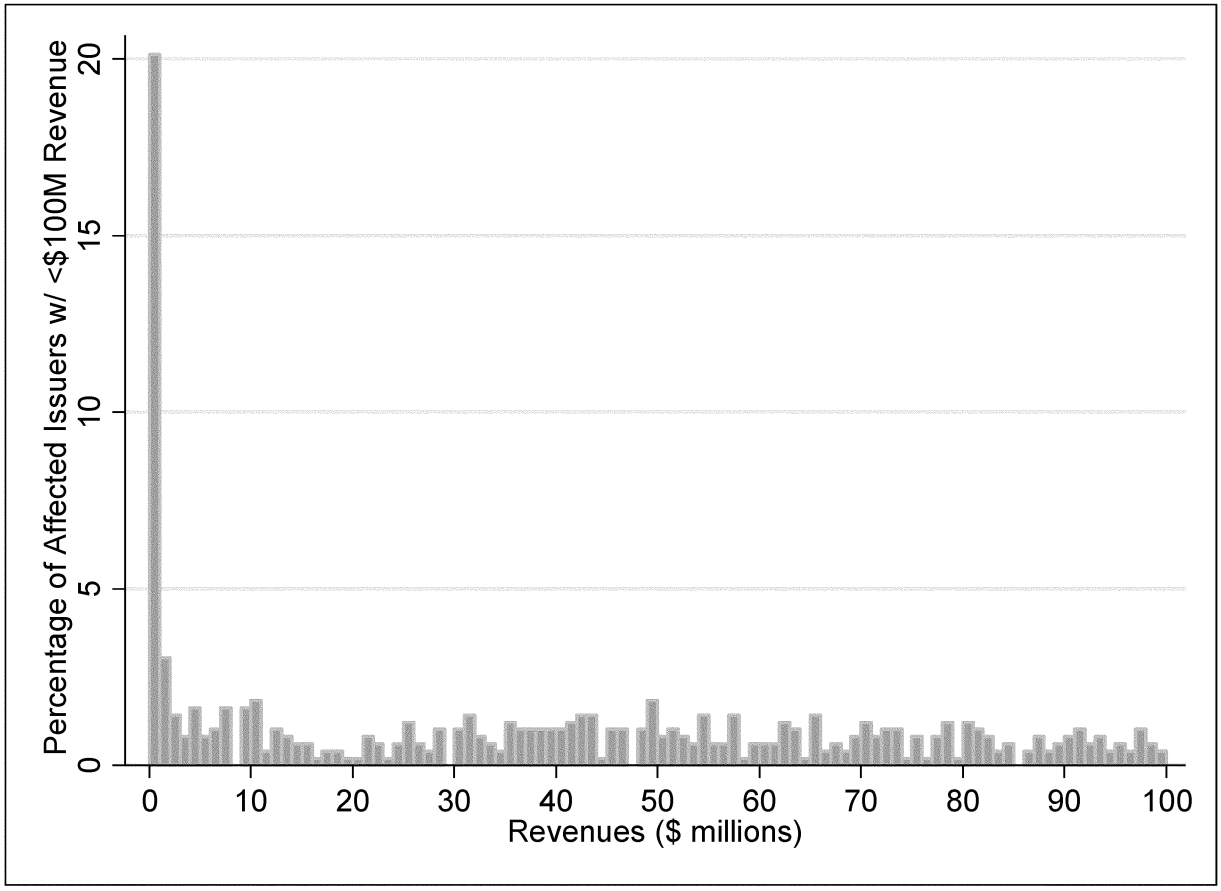
Figure 5 presents the distribution of revenues across the 520 accelerated filers (or large accelerated filers with public float of less than $560 million) that will be newly classified as non-accelerated filers because they have revenues (or, in the case of BDCs, investment income) of less than $100 million.[358]

[356] The estimates in this figure are based on staff analysis of data from XBRL filings. We corrected the public float data based on hand-collection from Form 10–K filings for five affected issuers whose public float reported in XBRL format was 1,000 times the public float reported on the cover page of the corresponding Form 10–K filing, resulting in values of over $50 billion in public float reported in XBRL. *See* note 336 above for details on the identification of the population of affected issuers.

[357] Because of the accelerated filer transition provisions, some of the affected issuers have public float of at least $50 million but below $75 million. *See* note 320 above.

[358] The estimates in this figure are based on staff analysis of data from XBRL filings, Compustat, and Calcbench. The revenue data used is from the last fiscal year prior to the annual report in calendar year 2018, because the SRC revenue test is based on the prior year's revenues. *See* note 336 above for details on the identification of the population of affected issuers.

Figure 5. Distribution of prior fiscal year revenues for affected issuers based on classification in 2018, amongst those with less than $100 million in revenues



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Other than a concentration of issuers with zero or near zero revenues,[359] these affected issuers are fairly evenly distributed over different levels of revenue up to $100 million in revenues. The additional seven affected issuers with revenues of at least $100 million but a public float of less than $60 million have revenues ranging from $119 million to $2.1 billion, with a mean of about $770 million in revenues.

The affected issuers are estimated to have median total assets of about $185 million, a median number of employees of about 115, and a median age of about 12 years.[360] For those issuers that will be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the median total assets and median number of employees are somewhat lower at about $125 million and 85 employees, and the median issuer age is slightly higher at about 19 years.[361] The majority of the affected issuers have negative net income and negative net cash flows from operations.[362]

The affected issuers are heavily concentrated, based on the number of issuers, in the ''Pharmaceutical Products'' (29.1 percent), ''Banking'' (22.4 percent),[363] ''Financial Trading'' (16.0 percent), ''Medical Equipment'' (4.4 percent), and ''Electronic Equipment'' (3.8 percent) industries.[364] If the distribution of eligible issuers does not change over time, the amendments could lead to a noticeable decrease in the presence of ''Pharmaceutical Products'' and ''Banking'' issuers in the pool of accelerated filers.

One commenter noted they sought to understand the industry concentration of the affected issuers based on measures such as their public float,

[359] Approximately 13 percent of the estimated 520 affected issuers with revenues of less than $100 million and approximately 11 percent of the estimated 290 affected issuers with revenues of less than $100 million that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement) have zero revenues.

[360] These estimates are based on staff analysis of data from Compustat. *See* note 336 above for details on the identification of the population of affected issuers.

[361] *Id.*

[362] *Id.* For the 295 affected issuers that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the median net income is approximately negative $6 million and the median net cash flows from operations is approximately negative $6 million.

[363] For the 295 affected issuers that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the proportion of ''Banking'' issuers drops to 7.8 percent. By contrast, the proportion in other industries does not change by more than a few percentage points.

[364] These estimates are based on staff analysis of data including SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. BDCs are manually-classified as members of the ''Financial Trading'' industry under this system as SIC codes were unavailable from our sources for the vast majority of these issuers. *See http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html. See* note 336 above for details on the identification of the population of affected issuers.

revenues, and total assets.[365] Based on their public float relative to the aggregate public float of the affected issuers, the affected issuers are heavily concentrated in the ''Pharmaceutical Products'' (33.5 percent), ''Banking'' (20.0 percent), ''Financial Trading'' (17.0 percent), and ''Medical Equipment'' (5.0 percent) industries.[366] Because revenues and total assets may be less comparable across industries of different types, we do not present the fraction of the aggregate revenue and assets of the affected issuers represented by each industry. As an alternative that we believe may be more informative, we present, in Table 10, the estimated proportion of all of the accelerated filers in each industry that will be affected by the amendments (*i.e.,* become non-accelerated), calculated based on several different measures of the size of the affected issuer pool in a given industry.[367] We focus this table on non-EGCs, and present affected issuers in the ''Banking'' industry both including and excluding those that will remain subject to the FDIC auditor attestation requirement, in order to highlight the disproportionate effects by industry in terms of the issuers that will newly be exempt from the ICFR auditor attestation requirement.

TABLE 10—PERCENTAGE OF ACCELERATED FILERS IN EACH INDUSTRY THAT WILL BE AFFECTED ISSUERS, EXCLUDING EGCS

Industry*	Percentage of accelerated filers (ex. EGCs) that are affected (ex. EGCs), calculated based on:			
	Number of issuers (%)	Total assets (%)	Revenue (%)	Public float (%)
Pharmaceutical Products	77.9	54.4	36.8	78.7
Banking	63.5	37.6	33.2	43.1
Banking (ex. issuers subject to FDIC att. requirement)	*14.5*	*5.2*	*10.9*	*17.5*
Medical Equipment	59.3	28.9	22.4	60.9
Financial Trading	58.5	22.5	5.0	61.6
Electronic Equipment	32.7	7.4	4.3	33.1
Other	16.0	4.0	1.8	11.8

* Excluding EGCs, we estimate that there are 74 affected issuers in the ''Pharmaceutical Products'' industry, 101 in ''Banking'' (23 after excluding issuers that would be subject to the FDIC attestation requirement), 62 in ''Financial Trading,'' 16 in ''Medical Equipment,'' and 16 in ''Electronic Equipment.'' The table excludes two affected issuers for which an industry classification was unavailable.

Amongst the industries in which the affected issuers are most greatly concentrated, issuers in the ''Pharmaceutical Products'' industry are the most disproportionately affected based on the number, total assets, revenues, and public float of the affected issuers (other than EGCs) relative to the representation of this industry among accelerated filers (other than EGCs). While a substantial fraction of accelerated filers other than EGCs in the ''Banking'' industry are also affected issuers, consistent with one commenter's finding that ''Banking'' is the industry most affected by the amendments,[368] the proportion of this industry that is affected is significantly reduced once we exclude banks that would be subject to the FDIC auditor attestation requirement and are therefore expected to experience limited benefits and costs as a result of the amendments.

2. Potential Benefits of Expanding the Exemption From the ICFR Auditor Attestation Requirement for Affected Issuers

The ICFR auditor attestation requirement has been associated with increased audit fees and other compliance costs. Exempting the affected issuers from this requirement therefore is likely to have the benefit of reducing compliance costs for these issuers. Given the disproportionate burden that the fixed component of compliance costs imposes on smaller issuers, as well as the likelihood that many of the affected issuers face financing constraints, these costs savings may enhance capital formation and competition. The discussion below explores the anticipated cost savings and their potential implications in detail. This discussion is focused on affected issuers that are not expected to be subject to the FDIC auditor attestation requirement.

We begin by summarizing evidence on the indirect costs and net costs of the ICFR auditor attestation requirement. We then estimate the anticipated effects on audit fees and on other compliance costs of expanding the exemption from this requirement for the affected issuers, using reported audit fees, survey data, and existing studies. Finally, we discuss the implications of the cost savings and other potential benefits.

a. Evidence on Possible Indirect Costs of the ICFR Auditor Attestation Requirement

The ICFR auditor attestation requirement may impose costs on issuers and investors beyond the direct costs of compliance. For example, an increased focus on ICFR as a result of

[365] *See* letter from CFA Inst.

[366] These estimates are based on staff analysis of data including SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. *See* note 364 above for more details. We corrected the public float data based on hand-collection from Form 10–K filings for five affected issuers whose public float reported in XBRL format was 1,000 times the public float reported on the cover page of the corresponding Form 10–K filing, resulting in values of over $50 billion in public float reported in XBRL. For the 295 affected issuers that would be newly exempt from all ICFR auditor attestation requirements (*i.e.,* those that are not EGCs and are not banks subject to the FDIC auditor attestation requirement), the proportions are ''Pharmaceutical Products'' (27.9 percent), ''Financial Trading'' (22.5 percent), ''Real Estate'' (7.6 percent), ''Medical Equipment'' (7.5 percent), and ''Banking'' (5.4 percent).

[367] The estimates in Table 10 are based on staff analysis of data including data on total assets from Compustat and SIC codes from XBRL filings and Ives Group Audit Analytics, using the Fama-French 49-industry classification system. See note 364 above for more details. Both the numerators (related to the affected issuers) and denominators (related to accelerated filers) exclude EGCs. We corrected the public float data based on hand-collection from Form 10–K filings for five affected issuers and six unaffected issuers whose public float reported in XBRL format was about 1,000 times (in one case, about 1,000,000 times) the public float reported on the cover page of the corresponding Form 10–K filing, resulting in values of over $50 billion in public float reported in XBRL. *See* note 336 above for details on the source of revenue and public float data and on the identification of the affected issuers. *See* note 298 above for details on the identification of filer type.

[368] *See* letter from CFA Inst.

the ICFR auditor attestation requirement could have negative effects on issuer performance, if it creates a distraction from operational matters or reduces investment or risk-taking.[369] One issuer noted in its comments that its managers' attention was diverted away from its operating performance in its first year complying with the ICFR auditor attestation requirement, and that, without this requirement, its managers' time could have been more productively spent focusing on opportunities to grow the company.[370] Broader evidence of the indirect costs of the ICFR auditor attestation requirement is inconclusive. Studies have documented a decrease in investment and risk-taking by U.S. companies compared to companies in other countries around the passage of SOX.[371] However, others have demonstrated that these findings are merely the continuation of a trend that began many years before the passage of SOX[372] and that they do not appear to be driven by the applicability of the ICFR auditor attestation or SOX Section 404(a) management ICFR reporting requirements.[373] Another study associates the SOX Section 404 requirements with a decrease in patents and patent citations, but the findings are limited to the early years of implementation of these requirements and the study is not able to distinguish to what extent the effects are attributable to the SOX Section 404(a) management ICFR reporting requirements versus the SOX Section 404(b) ICFR auditor attestation requirement.[374] We are unable to quantify the potential indirect cost savings resulting from the amendments due to the lack of reliable evidence and data that would allow us to quantitatively identify such effects.

b. Evidence on Net Costs of the ICFR Auditor Attestation Requirement

While we are unable to quantify the extent to which the expected cost savings exceed any loss of benefits associated with the ICFR auditor attestation requirement,[375] we note that certain studies have attempted to estimate such ''net costs'' of the requirement in specific contexts.

i. Studies Involving Avoidance Behavior

Some studies have provided evidence that non-accelerated filers may seek to avoid crossing the $75 million public float threshold and becoming accelerated filers.[376] Related studies have also found that issuers near or below this threshold are more likely than comparable issuers to take actions that may reduce or avoid an increase in their public float, such as disclosing more negative news in the second fiscal quarter (when public float is measured), increasing payouts to shareholders, reducing investment in property, plant, equipment, intangibles and acquisitions, and increasing the number of shares held by insiders.[377] One study uses this avoidance behavior to estimate the net costs of compliance with the ICFR auditor attestation requirement for issuers close to the $75 million public float threshold.[378] The study concludes that the overall costs, net of any benefits, of the ICFR auditor attestation requirement for these issuers is roughly $1 million to $2 million per year, but we note that the methodology used to translate the avoidance behavior into a dollar cost may be unreliable.[379]

Avoidance of the $75 million public float threshold would be consistent with smaller issuers finding the net costs associated with the ICFR auditor attestation requirement to be significant, though there could be other reasons for avoiding the threshold. For example, as one commenter argued, such avoidance may reflect managers who would like to avoid the scrutiny of an audit of ICFR because they are engaging in opportunistic behavior,[380] although we are unaware of direct evidence supporting this hypothesis. One commenter, representing 48 accounting and law professors, requested that we confirm whether the ''bunching'' of companies below the $75 million public float threshold remains present in today's markets.[381] The commenter noted that such an analysis could help provide confidence that the costs of the ICFR auditor attestation requirement remain as high as previously documented.[382] In response to this comment, our staff conducted supplemental analysis, presented in Figure 6.[383] However, as discussed below, the conclusions in this Economic Analysis do not rely on this analysis.

[369] *See* John Coates & Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* 28(3) Acct. Horizons 627 at 643–645 (2014) (''Coates and Srinivasan 2014 Study'') (discussing these possible effects and summarizing related studies).

[370] *See* letter from Guaranty.

[371] *See* Coates and Srinivasan 2014 Study, note 369 above (summarizing these studies).

[372] *Id.*

[373] *See* Ana Albuquerque & Julie Zhu (2018), *Has Section 404 of the Sarbanes-Oxley Act Discouraged Corporate Risk-Taking? New Evidence from a Natural Experiment,* Mgmt. Sci. (forthcoming) (using the staggered implementation of SOX Section 404 to better identify its effects on smaller issuers, with public float of less than $150 million, and finding no evidence of a decrease in the investment and risk-taking activities for issuers that were subject to SOX Section 404 versus those that were not), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049232.*

[374] *See* Huasheng Gao & Jin Zhang, *SOX Section 404 and Corporate Innovation,*'' J. of Fin. and Quantitative Analysis (2018) (forthcoming), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3130588.*

[375] While we quantify both anticipated costs and benefits of the amendments, there are many costs and benefits that we cannot quantify, so we are unable to quantify the net benefit or net cost of the amendments. See Section IV.C.3.d. for further discussion of this point.

[376] *See, e.g.,* Peter Iliev, *The Effect of SOX Section 404: Costs, Earnings Quality, and Stock Prices,* 45 J. of Fin. 1163 (2010) (''Iliev 2010 Study'') (finding that a disproportionate number of issuers had a public float of just under $75 million in 2004, when ICFR auditor attestations and management ICFR reports were first required for accelerated filers, but not in earlier years); Dhammika Dharmapala, *Estimating the Compliance Costs of Securities Regulation: A Bunching Analysis of Sarbanes-Oxley Section 404(b),* Working Paper (2016), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885849 (''Dharmapala 2016 study'');* and McCallen *et al.* 2019 study, note 308 above.

[377] *See* F. Gao, J.S. Wu & J. Zimmerman, *Unintended Consequences of Granting Small Firms Exemptions from Securities Regulation: Evidence from the Sarbanes-Oxley Act,* 47(2) J. of Acct. Res. 459 (2009) and M. E. Nondorf, Z. Singer, & H. You, *A Study of Firms Surrounding the Threshold of Sarbanes-Oxley Section 404 Compliance,* 28(1) Advances in Acct. 96 (2012). *See also* F. Gao, *To Comply or Not to Comply: Understanding the Discretion in Reporting Public Float and SEC Regulations,* 33(3) Contemporary Acct. Res. 1075 (2016) (presenting evidence that companies that expected higher compliance costs may have used discretion in defining affiliates in order to report lower float).

[378] *See* Dharmapala 2016 study, note 376 above.

[379] *Id.* This paper estimates a net cost of compliance for companies near the threshold of $4 million to $6 million for a few years of compliance (*i.e.,* $1 million to $2 million per year). The analysis leading to this estimate relies on the relation between public float and market capitalization for other companies to approximate the stock market value forgone by those that are estimated to be manipulating their public float downwards. However, we note that the ratio of market capitalization to public float for other companies may simply reflect their propensity towards having affiliated ownership rather than being a reliable basis with which to measure the cost incurred by manipulating public float.

[380] *See* letter from Prof. Barth *et al.*

[381] *See* letter from Prof. Honigsberg *et al.*

[382] *Id.*

[383] The estimates in this figure are based on staff analysis of data from XBRL filings associated with annual reports filed in calendar year 2018. The figure includes all issuers with an annual report on Form 10–K, 20–F or 40–F in calendar year 2018 and with public float data available in XBRL, excluding banks, ABS issuers, and RICs (although we note there were no instances of the latter two types of issuers in this sample before these filters were applied). Banks are identified as issuers with SIC codes of 6020 (commercial banks), 6021 (national commercial banks), 6022 (state commercial banks), 6029 (NEC commercial banks), 6035 (savings institutions, federally-chartered) or 6036 (savings institutions, not federally-chartered).

Figure 6. Distribution of public float of issuers (excluding banks, ABS issuers, and RICs) in 2018

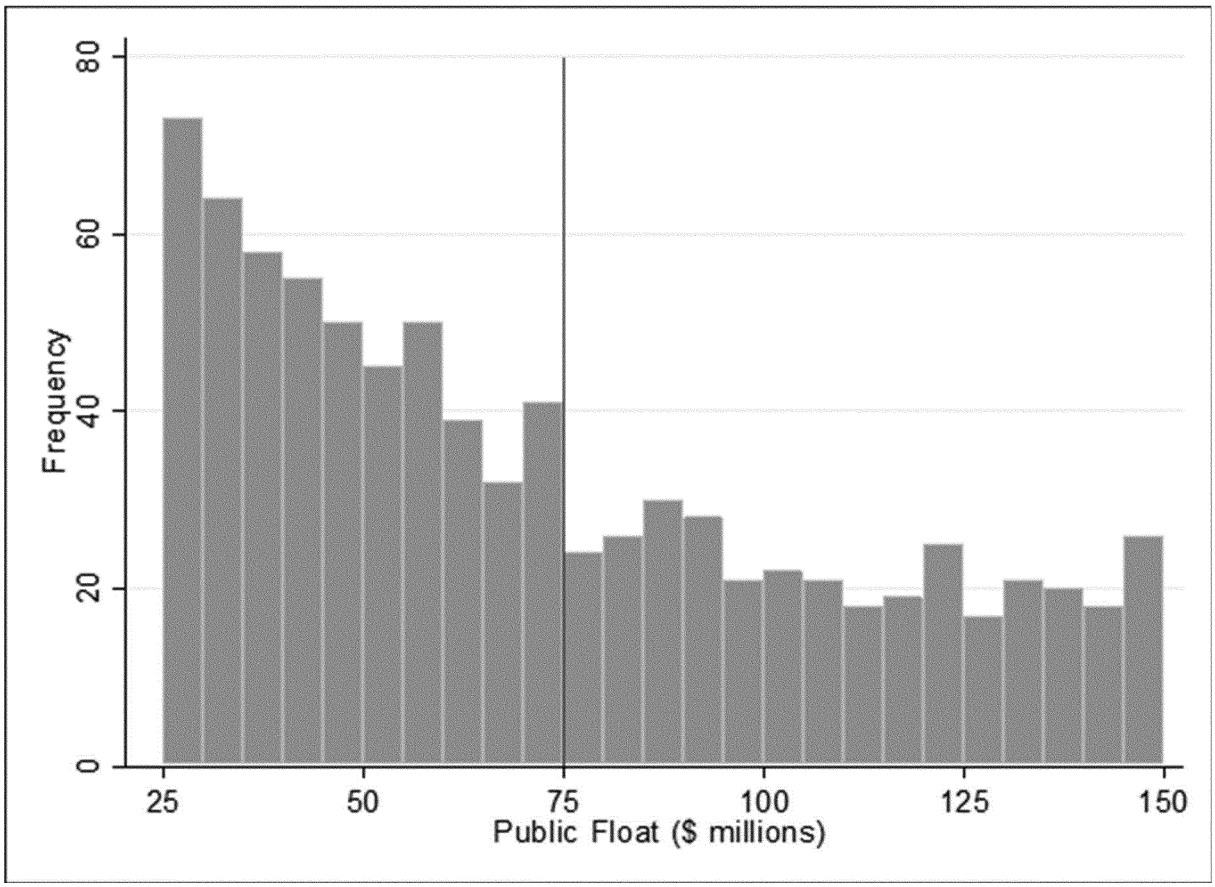


Figure 6 presents the distribution of public float across issuers other than banks, ABS issuers, and RICs. We exclude ABS issuers and RICs because they are unlikely to be sensitive to the public float threshold as they would not be subject to the ICFR auditor attestation requirement (or able to avail themselves of the disclosure accommodations for SRCs) regardless of their public float. We exclude banks because they may be subject to the FDIC auditor attestation requirement, which, as discussed above, is comparable to the ICFR auditor attestation requirement, regardless of their public float. While EGCs would not be subject to the ICFR auditor attestation requirement regardless of their public float, we nevertheless include them in Figure 6 because it is a temporary exemption and such issuers may already consider the implications of their public float in advance of graduating from this status. However, we obtain similar results when we include or exclude any of these categories of issuers.

The pattern in Figure 6 demonstrates that there may be some ''bunching'' of public floats below the $75 million threshold in 2018. The pattern is similar to that presented in two recent studies that find a discontinuity in public float at the $75 million threshold when considering data across the 12 or 13 year period ending in 2015.[384] Our findings for 2018 also are consistent with a year-by-year analysis in one of these studies that suggests that this behavior does not appear to change significantly over the time period studied.[385]

Our findings are less consistent with another analysis of public float, which failed to find evidence of ''bunching'' in 2017.[386] This analysis was cited in a submission to the comment file.[387] When we examine the data underlying this analysis,[388] we find that, although we obtain public float data from different sources,[389] our public float values are over 90 percent correlated with those used in tthis analysis. We note, however, that the analysis applies sample selection filters that exclude, among other issuers, issuers that would become newly subject to an ICFR auditor attestation requirement (and, during this time period, lose the disclosure accommodations for SRCs) upon crossing the $75 million public float threshold. The exclusions result in a sample size that is approximately half as large as that in our analysis.[390] For

[384] *See* McCallen *et al.* 2019 study, note 308 above, and Dharmapala 2016 study, note 376 above.

[385] *See* McCallen *et al.* 2019 study, note 308 above.

[386] *See* Commissioner Jackson's Statement. While we provide results for 2018 in Figure 6 in order to present the most recent and reliable available data, we obtain very similar results when running the same analysis for 2017.

[387] *See* letter from Prof. Barth *et al.,* citing an analysis in Commissioner Jackson's Statement that finds no evidence of bunching in 2017.

[388] *See* ''Public Float Data (2017)'' available at *https://www.sec.gov/news/public-statement/jackson-statement-proposed-amendments-accelerated-filer-definition.*

[389] The data underlying the analysis cited by a commenter is generated by using a computer program to extract text from annual reports, applying computer algorithms and filters to isolate public float numbers, and then manually checking the results. *See* Commissioner Jackson's Statement. The data underlying our analysis is based on XBRL filings.

[390] The figure in the other analysis reflects 388 issuers, compared to 731, or almost twice as many issuers, in our analysis.

example, we understand that the other analysis excludes all financial institutions and issuers with a market capitalization of greater than $150 million.[391] This difference, we find, accounts for the bulk of the difference in our figures. Thus, our analysis reflects a significantly larger and more representative sample of issuers and may therefore be more reliable.

As discussed above, if issuers seek to avoid crossing the $75 million public float threshold, such behavior could reflect a high net cost of the ICFR auditor attestation requirement but could also reflect a self-serving desire to avoid scrutiny. Any such behavior could also be influenced by other requirements associated with this public float threshold during this time period, such as the loss of scaled disclosure accommodations available to SRCs.[392] Thus, though we have considered the studies, evidence, and comments received regarding this avoidance behavior, the conclusions in this Economic Analysis do not rely on these findings.

ii. Studies Based on Comparative Analysis or Market Reactions

We have also considered studies that have used other methodologies to attempt to quantify the net costs or benefits of the ICFR auditor attestation requirement. One study attempts to quantify and compare certain costs and benefits of exempting non-accelerated filers from the ICFR auditor attestation requirement, focusing on those costs and benefits that the study deems to be measurable, and finds that the cost savings associated with exempting these issuers (an estimated $388 million in aggregate audit fee savings) have been less than the lost benefits (*e.g.,* an aggregate $719 million in lower earnings) in aggregate present value terms.[393] Studies have also used stock market reactions to changes in the applicability of the ICFR auditor attestation requirement to estimate its net costs or benefits, because the stock market valuation should incorporate both expected costs and expected benefits from a shareholder's perspective. We focus on studies that consider events that allow the effects of the ICFR auditor attestation requirement to be isolated from those of the other requirements that were imposed by SOX, as many early studies did not isolate the effects of the ICFR auditor attestation requirement from other changes required by the same legislation, such as the audit committee requirements of SOX Section 301 [394] and the certifications required pursuant to SOX Section 302. Regardless, the results of the studies we focus on have been mixed, perhaps due in part to changes over time in how the ICFR auditor attestation requirement has been implemented. For example, a study analyzing the response to announcements of initial delays in the application of the requirements to some issuers in order to identify the stock market reaction associated with the ICFR auditor attestation requirement found that this requirement was associated with a net reduction in stock market valuation for foreign issuers.[395] On the other hand, a study of the response to the later permanent exemption from the ICFR auditor attestation requirement for some issuers found that this requirement was associated with a net increase in stock market valuation for smaller issuers.[396] The latter finding is consistent with studies that conclude that the requirement is value-enhancing based on a negative stock market reaction to issuers excluding acquired operations from management's assessment of ICFR and the ICFR auditor attestation, though these studies do not determine the extent to which this effect is attributable to the ICFR auditor attestation.[397] Similarly, a study of smaller issuers that switched regimes over time found that being subject to the ICFR auditor attestation requirement was associated with an increase in stock market valuation for these issuers.[398]

iii. Other Evidence on Net Costs

The rate of exempt issuers voluntarily obtaining an ICFR auditor attestation has generally been low.[399] Consistent with this finding, a commenter indicated that small biotechnology companies are rarely asked by investors to voluntarily obtain an ICFR auditor attestation.[400] This may indicate that exempt issuers, when considering their own net cost or benefit of compliance, including how investors would react to their decisions, have typically deemed it to be more beneficial to expend these resources on other uses. However, as discussed in Section IV.C.3.d. below, it is probably not the case that issuers would voluntarily obtain an ICFR auditor attestation in every case in which, from the market or an investor's perspective, the total benefits of doing so would exceed the total costs.

When considering the net tradeoff between costs and benefits for accelerated filers with low revenues in particular, we also re-examined data

[391] Financial institutions are issuers with SIC codes between 6000 and 6999 and include issuers that are not banks. Other filters applied in that analysis include requiring that market capitalization data be available and that the reported public float be at least 10%, but no more than three times, the market capitalization.

[392] The analysis presented in Figure 6 is based on annual reports filed in calendar year 2018, which generally pertain to 2017 fiscal years. The amendments to the SRC definition were effective on September 10, 2018. *See* SRC Adopting Release, note 12 above.

[393] We note that the estimates in this study rely on a number of critical assumptions and estimations. *See* Weili Ge, Allison Koester, & Sarah McVay, *Benefits and Costs of Sarbanes-Oxley Section 404(b) Exemption: Evidence from Small Firms' Internal Control Disclosures,* 63 J. of Acct. and Econ. 358 (2017) (''Ge *et al.* 2017 Study'') (estimating the effect on audit fees by comparing the audit fees of non-accelerated filers to those of accelerated filers with market capitalization of $300 million or less; and estimating the effect on earnings by estimating the percentage of non-accelerated filers that may newly disclose ineffective ICFR upon entering an ICFR auditor attestation requirement, based on changes in the rate of disclosure of ineffective ICFR by issuers that transition into accelerated filer status, and applying to this estimate a further estimate of the difference in return on assets that could be associated with such disclosure and any related remediation, based on the results of a multivariate regression relating issuers' change in return on assets to a number of factors, including whether or not they disclosed and remediated ineffective ICFR). This study also estimates a delay over three years in the timing of a market value decline (that would otherwise have occurred at the beginning of this three year period) of $935 million associated with the exemption from the ICFR auditor attestation requirement.

[394] 15 U.S.C. 78j–1.

[395] *See* Iliev 2010 Study, note 376 above. This study also finds a net reduction in value for small domestic issuers from the SOX Section 404 requirements, but is not able, for these issuers, to isolate the effect attributable to the ICFR auditor attestation requirement versus the SOX Section 404(a) management ICFR reporting requirement.

[396] *See* Kareen Brown, Fayez Elayan, Jingyu Li, Emad Mohammad, Parunchana Pacharn, & Zhefeng Frank Liu, *To Exempt or not to Exempt Non-Accelerated Filers from Compliance with the Auditor Attestation Requirement of Section 404(b) of the Sarbanes-Oxley Act,* 28(2) Res. in Acct. Reg. 86 (2016) (''Brown *et al.* 2016 Study''). *See also* Christina Leuz & Peter Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54(2) J. of Acct. Res. 525 at 566–569 (2016) (''Leuz and Wysocki 2016 Study'') (summarizing mixed evidence from earlier event studies related to SOX that were unable to differentiate the effects of the ICFR auditor attestation requirement from other requirements imposed by SOX).

[397] *See, e.g.,* Robert Carnes, Dane Christensen, & Phillip Lamoreaux, *Investor Demand for Internal Control Audits of Large U.S. Companies: Evidence from a Regulatory Exemption for M&A Transactions,* 94(1) The Acct. Rev. 71 (2019) (''Carnes *et al.* 2019 Study'').

[398] *See* Hongmei Jia, Hong Xie, & David Ziebart, *An Analysis of the Costs and Benefits of Auditor Attestation of Internal Control over Financial Reporting,* Working Paper (2014) (''Jia *et al.* 2014 study''), available at *https://www.lsu.edu/business/accounting/files/researchseries/20141027JXZ.PDF.*

[399] *See* note 297 above.

[400] *See* letter from BIO. *See also* letter from Ardelyx Presentation, referencing similar statements in the BIO Study, note 69 above, (which states that ''the low rate of voluntary compliance by [biotechnology EGCs] suggests that investors do not demand or value costly Section 404(b) auditor attestations'').

from the SEC-sponsored survey of financial executives conducted during December 2008 and January 2009 (''2008–09 Survey'').[401] While the results of this survey might not be directly applicable a decade later, particularly given the changes over time discussed in Section IV.B.1. above, they provide some suggestive evidence that low-revenue issuers are more likely than other accelerated filers to believe that the costs of complying with SOX Section 404 substantially outweigh the benefits. In particular, when asked about the net costs or benefits of complying with SOX Section 404, 30 percent of respondents at an accelerated filer with revenues below $100 million indicated that the costs far outweighed the benefits, in contrast to 14 percent of respondents at an accelerated filer with greater revenues.[402] However, as noted by a commenter, these survey findings represent the views of issuers and may not be reflective of the views of investors.[403]

c. Potential Reduction in Audit Fees

While issuers disclose their total audit fees, they are not required to disclose the portion of these fees that is attributable to the ICFR auditor attestation requirement. Studies of the initial implementation of the ICFR auditor attestation requirement found that it was associated with a roughly 100 percent increase in audit fees for small accelerated filers.[404] However, these early estimates likely include some initial start-up costs, which were found to diminish over time.[405] Further, these estimates do not incorporate the effect of later developments such as the adoption of AS 2201, which was expected to reduce compliance costs for smaller issuers, and the adoption of the new risk assessment auditing standards, which may reduce the incremental cost of an integrated audit over a financial-statement only audit.

In the Proposing Release, we presented an analysis of audit fees from 2014–2017 for low-revenue issuers that are subject to the ICFR auditor attestation requirement compared to low-revenue issuers not subject to this requirement.[406] In particular, we compared audit fees in these recent years for accelerated filers that are subject to the ICFR auditor attestation requirement and have revenues of less than $100 million, relative to the audit fees of issuers in our comparison populations (non-accelerated filers, other than EGCs, and EGCs, neither of which is required to comply with the ICFR auditor attestation requirement) [407] that also have revenues of less than $100 million. Based on this analysis, and with consideration for the difference in size of the affected issuers versus the comparison sample, we derived a percentage estimate of 25 percent of total audit fees, and a dollar estimate of about $110,000 per year, that would be saved by issuers newly exempt from the ICFR auditor attestation requirement.[408] As discussed in more detail in the Proposing Release, the percentage estimate is generally consistent with the estimates, ranging from approximately five to 35 percent of total audit fees, from a variety of other analyses using data from after the 2007 change in the ICFR auditing standard.

Several commenters indicated that the expected cost savings are difficult to accurately quantify.[409] We acknowledge that, as discussed in more detail in the Proposing Release, our estimate is subject to significant uncertainty.[410] However, these commenters did not provide alternative methodologies or data for obtaining an estimate of the average savings. One recent study focusing on low public float issuers separately considered the subset of issuers with less than $100 million in revenues in their sample and estimated that an exemption from the ICFR auditor attestation requirement would result in an audit fee savings of $135,000 per year for these issuers.[411] While this analysis was focused on lower float issuers, it is generally supportive of the order of magnitude of our estimate. One commenter questioned whether our estimate considers the incremental costs associated with an audit approach that does not have the benefit of a related audit of ICFR.[412] We note that our analysis is intended to capture this effect, as the issuers in the comparison samples which we use to derive our estimate generally require this type of an audit approach because they are not subject to the ICFR auditor attestation requirement.

We therefore maintain, without change, our estimate of $110,000 in average audit fee savings per year per affected issuer that would be newly exempt from the ICFR auditor attestation requirement. As noted in the Proposing Release, the audit fee savings are expected to vary across the affected issuers, with some experiencing smaller savings and some experiencing much larger savings depending on their individual circumstances. In line with this expectation, several commenters insisted that any reductions in audit fees resulting from the amendments would depend on facts and circumstances and vary widely among issuers.[413] Consistent with these costs savings being highly varied, a number of commenters to the Proposing Release provided estimates of costs that specific issuers had incurred or expected to save ranging from $40,000 per year to costs of over $2 million dollars, though most of these estimates include costs other than audit fees (which are discussed below), some include one-time start-up costs as well as ongoing annual costs, and the largest estimate includes costs attributable to SOX Section 404(a) and

[401] *See* 2009 SEC Staff Study, note 304 above, and Cindy Alexander, Scott Bauguess, Gennaro Bernile, Alex Lee, & Jennifer Marietta-Westberg, *The Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,* 56 J. of Acct and Econ. 267 (2013) (''Alexander *et al.* 2013 Study'').

[402] These estimates are based on staff analysis of data from the 2008–09 Survey. The analysis considers responses pertaining to the most recent year for which a given respondent provided a response. We note that the rate of responses to the question about net benefits was lower than for other questions. *See* the 2009 SEC Staff Study, note 304 above, and Alexander *et al.* 2013 Study, note 401 above, for details on the survey and analysis methodology.

[403] *See* letter from Crowe.

[404] *See, e.g.,* William Kinney & Marcy Shepardson, *Do Control Effectiveness Disclosures Require SOX 404(b) Internal Control Audits? A Natural Experiment with Small U.S. Public Companies,* 49(2) J. of Acct. Res. 413 (2011) (''Kinney and Shepardson 2011 Study'') (considering those accelerated filers that have newly crossed the $75 million public float threshold in a given year); Iliev 2010 Study, note 376 above (considering those accelerated filers with between $75 million and $100 million in public float); Michael Ettredge, Matthew Sherwood, & Lili Sun, *Effects of SOX 404(b) Implementation on Audit Fees by SEC Filer Size Category,* 37 (1) J. of Acct. and Pub. Pol'y 21 (2017) (considering accelerated filers as a category, as opposed to large accelerated filers, but also finding a contemporaneous 42.7 percent increase in audit fees for non-accelerated filers even though were not subject to the ICFR auditor attestation requirement); and Susan Elridge & Burch Kealey, *SOX Costs: Auditor Attestation under Section 404,* Working Paper (2005), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=743285* (considering accelerated filers in the lowest quintile of total assets).

[405] *See, e.g.,* Alexander *et al.* 2013 Study, note 401 above.

[406] *See* Section III.C.3.b. of the Proposing Release, note 4 above.

[407] The Proposing Release, note 4 above, provides more information on why we rely on these comparison populations, how they compare to the affected issuers, and how differences between the comparison populations and the affected issuers could affect our inference. *See* Section III.C.2. of the Proposing Release, note 4 above.

[408] *See* Section III.C.3.b. of the Proposing Release, note 4 above.

[409] *See, e.g.,* letters from EY, Grant Thornton, and RSM.

[410] *See* Section III.C.3.b. of the Proposing Release, note 4 above.

[411] *See* McCallen *et al.* 2019 study, note 308 above.

[412] *See* letter from BDO.

[413] *See, e.g.,* letters from EY, Grant Thornton, and PWC.

other SOX requirements.[414] Similarly, a few of the commenters to the SRC Proposing Release cited costs of $400,000 to over $1 million associated with the ICFR auditor attestation requirement (though it is possible that these estimates also include costs other than audit fees).[415]

One commenter noted that the requirement to implement scaled, risk-based audits of ICFR should already result in an appropriately reduced cost of the ICFR auditor attestation requirement for many affected issuers.[416] We note that our quantitative methodology is intended to reflect the current cost of the ICFR auditor attestation requirement, including the benefits of scaling. Also, while the adoption of AS 2201 in 2007, which facilitated the scaling of audits of ICFR, was found to have initially led to lower audit fees, there is evidence that these costs began to increase again around the year 2010.[417]

Finally, we note that some issuers may voluntarily choose to continue to make these expenditures if they deem the benefits of the ICFR auditor attestation to exceed the cost, and that the extent of savings may be affected if auditors continue to test the operating effectiveness of some controls as part of their financial statement audit. In such cases, the audit fee savings may be reduced, but we would expect the potential costs of expanding the exemption from the ICFR auditor attestation requirement to be correspondingly lower as well.

[414] *See* letters from Cerecor (estimating a total of $1 million in expected savings for 2020 associated with an exemption from the ICFR auditor attestation requirement), Concert (estimating expected audit fees associated with the ICFR auditor attestation requirement to represent approximately 45 percent of its total audit fees), Guaranty (estimating future annual costs of $40,000 in personnel and external audit costs associated with ongoing compliance with the ICFR auditor attestation requirement, as well as a higher estimate of costs expended for their first year of compliance in 2018 of $167,745 in audit fees as well as $72,000 and 2,340 labor hours expended across the issuer's accounting, information technology and risk management offices), Pieris (estimating that their first year of compliance with the ICFR auditor attestation requirement would be associated with a total of $1.5 million in costs), Syros (estimating that its expected additional costs for compliance with the ICFR auditor attestation requirement would range from $250,000 to $400,000 per year, including incremental external auditor fees, consultant fees, and an increased burden on employee resources), and Terra Tech (estimating over $2 million in costs expended in 2018 for meeting all of its SOX compliance requirements, including but not limited to the ICFR auditor attestation requirement, representing costs to build a new information technology infrastructure, to hire new staff and consultants, and to pay auditing fees).

[415] *See* note 208 of the Proposing Release, note 4 above.

[416] *See* letter from CFA.

[417] *See* Section IV.B.1. above.

d. Additional Potential Compliance Cost Savings

The ICFR auditor attestation requirement is associated with other compliance costs beyond audit fees, including outside vendor costs and internal labor costs.[418] However, these costs are difficult to measure because they are not required to be reported. Practitioner studies based on surveys of issuers often report non-audit costs of the internal control assessment and reporting requirements of SOX Section 404 in particular or of SOX in general, but the costs attributable to the ICFR auditor attestation requirement versus the SOX Section 404(a) management ICFR reporting requirements or other requirements are generally not broken out separately.[419]

The Proposing Release presented an analysis of data from the 2008–09 Survey on the non-audit costs of SOX Section 404 in general, such as outside vendor costs, labor, and non-labor costs (such as software, hardware and travel costs), as well as the percentage of the outside vendor costs and labor hours that were attributable to the ICFR auditor attestation requirement. Based on this analysis, we estimated that the average non-audit costs attributable to the ICFR auditor attestation requirement at the time of the survey were approximately $125,000 per year.[420] Adjusting this historical cost downward slightly to account for the fact that some of these expenditures may now be required even in the case of a financial statement only audit (due to the risk assessment auditing standards issued subsequent to this survey), we estimated that the average non-audit costs attributable to the ICFR auditor attestation requirement are currently approximately $100,000 per year.[421] As noted in the Proposing Release, this estimate is subject to uncertainty because it is unclear exactly how the current costs may differ from the survey responses a decade ago, and the costs may be different for low-revenue issuers.

[418] *See, e.g.,* Leuz and Wysocki 2016 Study, note 396 above.

[419] *See, e.g.,* Protiviti 2018 Report, note 317 above (finding, for example, total internal costs associated with all aspects of SOX compliance to be $282,900 for 2018 for respondents with less than $100 million in revenues) and SOX & Internal Controls Professionals Group, Moss Adams LLP, and Workiva (2017), ''2017 State of the SOX/Internal Controls Market Survey'' (''2017 SICPG Survey Report''), available at *www.mossadams.com/landingpages/2017-sox-and-internal-controls-market-survey*.

[420] *See* Section III.C.3.c. of the Proposing Release, note 4 above.

[421] *Id.*

Commenters did not provide alternative methodologies for obtaining an estimate of the average non audit-fee savings. One recent study focusing on low public float issuers considered the potential effect of the ICFR auditor attestation requirement on selling, general and administrative (''SG&A'') expenses other than audit fees, and concluded that there was an association with an increase in these internal costs, but was unable to reliably estimate the magnitude of this effect.[422] We therefore maintain, without change, our estimate of $100,000 in average non-audit compliance cost savings per year per affected issuer that would be newly exempt from the ICFR auditor attestation requirement.

As in the case of audit fees, some of the affected issuers are expected to experience lower cost savings while others would experience greater savings, depending on their individual circumstances. For example, we noted in the Proposing Release that some issuers had reported potential cost savings other than audit fees ranging from about $110,000 to about $350,000.[423] While commenters to the Proposing Release generally did not separately break out these non-audit costs, they reported total costs including audit fees but also internal labor and consultant costs ranging from $40,000 to over $2 million, though, as noted above, some include one-time start-up costs as well as ongoing annual costs, and the largest estimate includes costs attributable to SOX Section 404(a) and other SOX requirements.[424]

e. Implications of the Cost Savings

While we estimate the average compliance cost associated with the ICFR auditor attestation requirement for the affected issuers, it is more difficult to discern whether incurring the costs of this requirement represents the most effective use of funds for these issuers. As discussed in Section IV.C.3.c. below, issuers for whom the requirement is eliminated may determine that it is worthwhile to use these funds to voluntarily undergo an audit of ICFR.[425] Alternatively, some of these issuers could directly invest the compliance cost savings in improving their

[422] *See* McCallen *et al.* 2019 study, note 308 above.

[423] See note 211 of the Proposing Release, note 4 above.

[424] *See* letters from Cerecor, Guaranty, Pieris, Syros, and Terra Tech, as discussed in more detail in above note 414. *See also* Ardelyx Presentation, citing the BIO Study, note 69 above.

[425] *See* letter from BIO (supporting allowing ''issuers and their investors the flexibility to determine for themselves whether Section 404(b) is relevant to their business'').

operations and prospects for growth, or in their control systems.

In total, we estimate an average cost savings of $210,000 per issuer per year, with some of the affected issuers experiencing lesser or greater savings.[426] While a few commenters noted that ICFR auditor attestations have become less expensive over time [427] or that they should already be less expensive for the affected issuers due to the ability to scale the audit of ICFR,[428] we note that our analysis, using only recent years of data and low-revenue issuers, is intended to capture any such effects.

Several commenters argued that these cost savings are economically small.[429] In particular, they estimated that the savings represent 0.5 percent of the average affected issuer's revenue and 0.1 percent of its market value.[430] Similarly, many commenters asserted that the proposed amendments would not enhance capital formation—and some indicated they could even reduce capital formation.[431] Others noted that, in general, the costs of the ICFR auditor attestation requirement are substantial,[432] and that by eliminating the requirement for certain issuers, the proposed amendments would enhance capital formation or allow those issuers to preserve capital.[433] We continue to believe that the average expected savings is likely, in many cases, to represent a meaningful cost savings for issuers with less than $100 million in revenue and may thus have beneficial economic effects on competition and capital formation.

In particular, while the average annual cost savings may represent a small percentage of the average affected issuers' revenues and market capitalizations, it is significant relative to the income and cash flows of these issuers. As noted in the Proposing Release, low-revenue issuers are likely to face financing constraints because they do not have access to internally-generated capital.[434] A majority of the affected issuers that will be newly exempt from the ICFR auditor attestation requirement, and that will not be subject to the FDIC auditor attestation requirement, have negative net income and negative net cash flows from operations.[435] In the absence of significant income generation, the average savings of $210,000 per year may be likely to be put to productive use,[436] such as towards capital investments, which would enhance capital formation. A number of issuers commented that they anticipated that the savings would allow for increased investment in their core business.[437] Also, while some issuers may experience lesser savings, some commented that they expect to experience substantially greater savings,[438] so the cost savings are likely to be significant for some, even if not all, of the affected issuers.

Further, several commenters cited fixed costs of compliance that do not scale with size.[439] Because of the fixed costs component of compliance costs, smaller issuers generally bear proportionately higher compliance costs than larger issuers.[440] To illustrate this disparity, we estimated in the Proposing Release that total audit fees represent about 22 percent of revenues on average for accelerated filers with less than $100 million in revenues, versus 0.5 percent of revenue for those above $100 million in revenues.[441] Reducing the affected issuers' costs would reduce their overhead expenses and may enhance their ability to compete with larger issuers.

The alleviation of these costs could be a positive factor in the decision of additional companies to enter public markets.[442] That is, if future compliance costs associated with ICFR auditor attestations weigh against these companies becoming publicly traded, reducing these expected future costs may enhance capital formation in the public markets and the efficient allocation of capital at the market level. As noted above, the expected compliance cost savings are likely to vary across issuers. The amendments may be most likely to influence the decision to enter the public markets for companies that anticipate particularly high costs to obtain an ICFR auditor attestation and that expect low levels of revenue to persist for many years into the future.

Some commenters suggested that the amendments would encourage companies to enter the public markets.[443] On the other hand, other commenters maintained that the ICFR auditor attestation requirement does not prevent companies from entering the public markets.[444]

Research investigating the link between SOX and companies exiting or choosing not to enter public markets has been inconclusive.[445] We agree with commenters who stated that a number of other factors have been associated

[426] As noted above, this estimate is not intended to apply to affected issuers that would not otherwise be subject to the ICFR auditor attestation requirement (*i.e.,* EGCs) or that would remain subject to the FDIC auditor attestation requirement (*i.e.,* banks with assets of over $1 billion).

[427] *See, e.g.,* letters from CFA Inst. and Deloitte.

[428] *See* letter from CFA.

[429] *See, e.g.,* letters from CFA, CFA Inst., CII, and Prof. Barth *et al.*

[430] We obtain similar estimates. Specifically, we estimate that the annual savings represents of 0.7 percent of the median revenue and 0.1 percent of the median market capitalization of the affected issuers that would be newly exempt from all ICFR auditor attestation requirements. We note, however, that 12 percent of these issuers have zero revenues, and that the savings are estimated for a single year while market capitalization incorporates expectations regarding all future years of performance.

[431] *See, e.g.,* letters from Better Markets, CII, CFA, and Prof. Ge *et al. See also* CFA Inst. (stating that the Proposing Release, note 4 above, does not demonstrate that eliminating the ICFR auditor attestation requirement would enhance capital formation).

[432] *See, e.g.,* letters from BIO, Broadmark, Carver, Guaranty, ICBA, MSB, SSB, and Syros.

[433] *See, e.g.,* letters from Andersen, CLSA, Concert, ICBA, and NASBA.

[434] For example, the Proposing Release, note 4 above, cited one commenter that indicated that ''pre-revenue small businesses utilize only investment dollars to fund their work'' and that any cost savings thus ''could lead to funding for a new life-saving medicine.'' *See* note 213 of the Proposing Release, note 4 above.

[435] *See* note 362 above.

[436] For example, in a survey of issuers in the biotech industry, among 11 biotech EGCs that responded to a question regarding how an extension of the exemption from the ICFR auditor attestation requirement would affect them given the costs associated with the requirement, eight out of the 11 issuers indicated that they expected a positive impact on investments in research and development and six out of the 11 issuers indicated that they expected a positive impact on hiring employees. *See* BIO Study, note 69 above.

[437] *See, e.g.,* letters from Cerecor, Concert, Guaranty, Pieris and Syros.

[438] *See, e.g.,* letters from Cerecor, Corvus, and Terratech, estimating savings of $1 to $2 million.

[439] *See* letters from ASA, Broadmark, Chamber, and Guaranty.

[440] While it is difficult to identify the specific source of the fixed component of compliance costs, there is empirical evidence of such fixed costs based on differences in the ratio of such costs to measures of issuer size across issuer size categories. For example, the ratio of the costs for accelerated filers of complying with Section 404 to the book value of the issuer's assets decreases with issuer size. *See, e.g.,* Figure 1 of Alexander *et al.* 2013 Study, note 401 above. There is evidence of some such fixed costs persisting even after the 2007 change in the ICFR auditing standard facilitating the scaling of an audit of ICFR, as demonstrated by the results in the cited figure for issuers that had been complying with Section 404(b) for five years (as observations in the figure pertaining to lesser years of experience may include costs experienced by some issuers in years prior to the 2007 changes).

[441] *See* Section III.C.2.d. of the Proposing Release, note 4 above.

[442] *See, e.g.,* letter from ICBA.

[443] *See, e.g.,* letters from AdvaMed, AdvaMed *et al.,* Broadmark, Cerecor, and ICBA.

[444] *See, e.g.,* letters from CFA, CFA Inst., CII, and Crowe.

[445] There is some evidence of a decreased rate of IPOs and an increased rate of going private transactions and deregistrations in the United States after SOX. However, it is unclear to what extent these changes can be attributed to SOX (or to the auditor attestation requirement in particular) versus other factors, and to what extent these changes are a cause for concern. *See e.g.,* Coates and Srinivasan 2014 Study, note 369 above, at 636–640 (summarizing a number of studies in this area).

with the decline in listings.[446] Further, newly public issuers can already avail themselves of an exemption from the ICFR auditor attestation requirement for at least one and generally up to five years after their IPO.[447] While the amendments could be a positive factor in the decision of additional companies to enter public markets, it may not be the decisive factor, and the direct impact of the amendments on the number of publicly traded companies may be limited to the extent that companies may be more focused on other factors associated with the decision to go public.

3. Potential Costs of Expanding the Exemption From the ICFR Auditor Attestation Requirement for Affected Issuers

Exempting the affected issuers from the ICFR auditor attestation requirement may result, over time, in management at this category of issuers being less likely to maintain effective ICFR, which in turn may result in less reliable financial statements, on average, for these issuers. The discussion below explores this potential effect and its implications in detail. We also consider two mitigating factors that could be associated with the affected issuers on average, though we acknowledge that they may not apply equally to all of the affected issuers. First, low-revenue issuers may, on average, be less susceptible to the risk of certain kinds of misstatements, such as errors associated with revenue recognition.[448] Second, in many cases, the market value of such issuers may be driven to a greater degree by their future prospects than by the current period's financial statements, which may affect how, on average, investors use these issuers' financial statements. This discussion is focused on affected issuers that will be newly exempt from the ICFR auditor attestation requirement and will not be subject to the FDIC auditor attestation requirement.

Exempting the affected issuers from the ICFR auditor attestation requirement could also increase the risk that material weaknesses in ICFR may not be detected and disclosed, and thereby reduce the information available to investors for gauging the reliability of these issuers' financial statements. In this regard, we also discuss below the potential effects related to the identification and disclosure of material weaknesses in ICFR at the affected issuers. However, given the size of the estimated effect as well as recent findings discussed in Section IV.C.3.a. below on how ICFR auditor attestations may provide limited information about the risk of future restatements,[449] we believe that any such effect would not significantly affect investors' overall ability to make informed investment decisions.

a. Broad Considerations and Evidence Regarding the Effects of ICFR Auditor Attestations on Financial Reporting

This section summarizes a number of broad economic considerations related to the possible effects of an ICFR auditor attestation requirement on financial reporting in order to provide context for the more detailed analysis of the costs of exempting the affected parties from this requirement that follows. As discussed below, the anticipated effects of changes to the population of issuers subject to the ICFR auditor attestation requirement will depend on the characteristics of the specific group of issuers that will be affected. In this regard we note that prior research has not focused on the effects of the ICFR auditor attestation requirement on low-revenue issuers in particular. As discussed in Section IV.B.1., there also have been significant changes over time in the implementation of the ICFR auditor attestation requirement, the standards applying to a financial statement audit even in the absence of an audit of ICFR, and the execution of audits of financial statements and of ICFR, which may have had the effect of reducing both the incremental costs and incremental benefits of an ICFR auditor attestation since the periods studied in much of the existing research. We therefore acknowledge that, while we believe that consideration of the past research is an important part of our analysis, these factors limit our ability to rely on the findings of past research to predict how the amendments would affect the particular class of issuers implicated by this rulemaking.

ICFR auditor attestations can have two primary types of benefits. First, the ICFR auditor attestation reports can provide incremental information to investors about the reliability of the financial statements. Second, the reliability of the financial statements can be enhanced. That is, the expectation of, or process involved in, the ICFR auditor attestation could lead issuers to maintain better controls, which could lead to more reliable financial reporting. Importantly for our evaluation of these possible benefits, however, we do not directly observe the effectiveness of ICFR and the reliability of financial statements, but only the associated disclosures by issuers. For example, while restatements may indicate that controls have failed, such restatements are often predicated on the underlying misstatements being detected. Given such limitations with the available data, the analysis in existing studies and in this release is necessarily less than definitive.

Regarding the first possible benefit of ICFR auditor attestations, academic research provides some evidence that ICFR auditor attestation reports contain information about the reliability of financial statements, but also demonstrates that the incremental information provided by these reports may be limited. The 2011 SEC Staff Study summarizes evidence that ICFR auditor attestations generally resulted in the identification and disclosure of material weaknesses that were not previously identified or whose severity was misclassified when identified by management in its assessment of ICFR, and that investor risk assessments and investment decisions were associated with the findings in auditor attestation reports.[450] As noted by a commenter,[451] various survey results are also supportive of these reports being informative to investors.[452]

However, more recent studies have found that auditor identification of material weaknesses in ICFR tends to be concurrent with the disclosure of restatements, rather than providing advance warning of the potential for

[446] *See, e.g.,* letters from CFA, CFA Inst., CII, and Crowe. Other factors commenters cited include the expansion of exemptions to registration that increase companies' ability to raise funds privately, *see, e.g.,* letters from CFA, CII, and Crowe; corporate consolidations, *see, e.g.,* letters from CFA and CII; market conditions, *see* letter from CFA; and the general regulatory environment, *see* letter from Crowe.

[447] *See* note 11 above regarding the exemption of EGCs from the auditor attestation requirement.

[448] *See* BIO Study, note 69 above (finding that biotechnology EGCs have lower restatement frequencies than other issuers, after controlling for other factors, and attributing this to their ''absence of product revenue'' based on findings that revenue recognition is one of the most frequent drivers of financial restatements).

[449] *See* notes 453 through 459 below and accompanying text.

[450] *See* 2011 SEC Staff Study, note 198 above, at 97–99 and 102–104. *See also* Coates and Srinivasan 2014 Study, note 369 above.

[451] *See* letter from CII.

[452] *See* Lawrence Brown, Andrew Call, Michael Clement, and Nathan Sharp, *The Activities of Buy-Side Analysts and the Determinants of their Stock Recommendations,* 62 J. of Acct. and Econ. 139 (2016) (finding, in a survey of buy-side analysts, that 60 percent responded that material weaknesses in ICFR are definitely a red flag of management potentially misrepresenting financial results, and that the existence of a material weakness in ICFR was the most cited red flag for misrepresentation followed by weak corporate governance; however, this survey did not differentiate between firms subject or not subject to the ICFR auditor attestation requirement).

restatements.[453] While these findings do not imply that ICFR auditor attestation reports fail to provide any useful information about the risk of future restatements,[454] they demonstrate that this information may be limited. Further, researchers have been able to predict the identification by auditors of material weaknesses in ICFR beyond those identified by management, to some extent, by using otherwise available information about issuers beyond current restatements, such as their institutional ownership, aggregate losses, past restatements, and late filings.[455] One commenter notes that this predictability does not imply that there is limited incremental information provided by ICFR auditor attestation reports, as their analysis suggests that investors are not able to fully discern misreporting by issuers about their ICFR.[456] Still, we believe that the evidence suggests that markets at least partially, though perhaps not fully, incorporate this information even in the absence of an ICFR auditor attestation.[457] Limitations to the incremental information provided by ICFR auditor attestation reports about the risk of future restatements may result from disincentives, such as the increased risk of litigation and greater likelihood of management and auditor turnover that have been associated with earlier material weakness disclosures, for issuers and their auditors to disclose material weaknesses in the absence of restatements.[458] It may also result from issues with the quality of the audit of ICFR. In this regard, researchers have found that PCAOB scrutiny of these audits has been associated with a slightly higher rate of identification of material weaknesses in ICFR prior to a later restatement.[459]

A further reason why ICFR auditor attestation reports may provide only a weak warning about future restatements is that the audit of ICFR may contribute to the avoidance of misstatements, leading us to observe only the residual restatements where the misstatement risk was not foreseen or a misstatement was not detected for reasons unrelated to internal controls. Thus, the second possible benefit we consider is that the audit of ICFR may encourage management to maintain more effective controls and thereby deter accounting errors and fraud. The academic research discussed below documents substantial evidence that would be consistent with such effects, though, as is common in financial economics, it is difficult to determine whether the documented differences can be causally linked to the audit of ICFR.[460]

In particular, while issuers are subject to a number of requirements discussed above that are intended to help to provide adequate internal controls and reliable financial statements,[461] studies have documented a significant association between audits of ICFR and the maintenance of better internal controls. The 2011 SEC Staff Study provides analysis and summarizes research indicating that issuers that were not required to obtain an ICFR auditor attestation disclosed ineffective ICFR at a greater rate than those that were subject to such requirements,[462] and newer studies demonstrate that this difference has remained consistent in recent years.[463] Further, a recent paper finds that the ICFR auditor attestation requirement, but not management ICFR reporting requirements alone, are associated with enhanced quarterly earnings accrual quality, and argues that this is an indication of the improved quality of internal controls.[464] We note, however, that this study finds that the improvements for issuers subject to the ICFR auditor attestation requirement are attenuated after the 2007 change in the ICFR auditing standard discussed in Section IV.B.1. above.[465] The ICFR auditor attestation requirement has also been associated with a higher rate of remediation of material weaknesses after they are disclosed.[466] As noted by

[453] *See, e.g.,* Sarah Rice & David Weber, *How Effective is Internal Control Reporting under SOX 404? Determinants of the (Non-)Disclosure of Existing Material Weaknesses,* 50(3) J. of Acct. Res. 811 (2012); William Kinney, Roger Martin, & Marcy Shepardson, *Reflections on a Decade of SOX 404(b) Audit Production and Alternatives,* 27(4) Acct. Horizons 799 (2013); and Daniel Aobdia, Preeti Choudhary, & Gil Sadka, *Do Auditors Correctly Identify and Assess Internal Control Deficiencies? Evidence from the PCAOB Data,* Working Paper (2018), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2838896. See also* Kinney and Shepardson 2011 Study, note 404 above.

[454] *See, e.g.,* 2011 SEC Staff Study, note 198 above, at 86 (citing evidence that while both issuers subject to SOX Section 404(b) as well as those only subject to SOX Section 404(a) often report restatements despite previously reporting that their ICFR was effective, such restatements were 46 percent higher among those filing only SOX Section 404(a) reports). *See also* PCAOB Investor Advisory Group, *Report from the Working Group on the Investor Survey* (2015), available at *https://pcaobus.org/News/Events/Documents/09092015_IAGMeeting/Investor_Survey_Slides.pdf* (reporting survey findings that 72 percent of institutional investors indicated that they relied on ICFR auditor attestations either ''extensively'' or ''a good bit'').

[455] *See, e.g.,* Ge *et al.* 2017 Study, note 393 above.

[456] *See* letter from Prof. Ge *et al.*

[457] *See, e.g.,* H. Ashbaugh-Skaife, D. Collins, W. Kinney, & R. LaFond, *The Effect of SOX Internal Control Deficiencies on Firm Risk and Cost of Equity,* 47(1) J. of Acct. Res. 1 (2009) (''Ashbaugh-Skaife *et al.* 2009 Study'') (finding that companies that newly disclose material weaknesses in their ICFR have an increase in their cost of capital, but that this increase is lower for companies with the characteristics most associated with having such material weaknesses, *i.e.,* those for which the market may be least surprised by the disclosures, at about 50 basis points, and higher for companies without such characteristics, at about 125 basis points).

[458] *See* Sarah Rice, David Weber, & Biyu Wu, *Does SOX 404 Have Teeth? Consequences of the Failure to Report Existing Internal Control Weaknesses,* 90(3) Acct. Rev. 1169 (2015). We note that auditors have a duty to follow auditing standards and, if they do not, face associated enforcement, inspection, reputation, and litigation risks that provide a countervailing incentive.

[459] *See, e.g.,* Defond and Lennox 2017 Study, note 307 above (finding that PCAOB inspections may increase auditors' issuance of adverse internal control opinions to clients with later restatements; in particular, the study documents that in 2010, 96 percent of financial statements that were later restated were accompanied by ICFR auditor attestations disclosing no material weaknesses in ICFR, while this rate dropped to 91 percent by 2013).

[460] *See* Coates and Srinivasan 2014 Study, note 369 above, and Leuz and Wysocki 2016 Study, note 396 above (both articles discussing the limited ability to make causal attribution based on research on the effects of the provisions of SOX, but also highlighting the specific studies that can more plausibly make causal claims). *See also Report to Congress: Access to Capital and Market Liquidity,* August 2017 SEC Staff study 24–27 (discussing similar limitations, in a different context, in the ability to make causal inferences about the effects of regulation because of data and experimental design issues), available at *https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-dera-2017.pdf.*

[461] *See* Section IV.B.1. above.

[462] *See* 2011 SEC Staff Study, note 198 above, at 41 and 86–87. The rate of ineffective ICFR is based on the findings of management reports on ICFR pursuant to SOX Section 404(a). Because auditor attestations of ICFR are associated with an increased detection and disclosure of material weaknesses, as discussed above, the rate of ineffective ICFR reported by issuers not subject to the auditor attestation requirement may be understated, which would result in this difference also being understated.

[463] *See, e.g.,* Audit Analytics, *SOX 404 Disclosures: A Fourteen Year Review* (Sept. 2018) (''2018 Audit Analytics Study''), available at *www.auditanalytics.com/blog/sox-404-disclosures-a-fourteen-year-review/.*

[464] *See* Schroeder and Shepardson 2016 Study, note 305 above (using quarterly accruals quality, measured by the level of quarterly discretionary working capital accruals and the quarterly accrual estimation error, as a proxy for internal control quality based on the argument that internal control improvements should be exhibited in unaudited financial reports).

[465] *Id.*

[466] *See* Vishal Munsif & Meghna Singhvi, *Internal Control Reporting and Audit Fees of Non-Accelerated Filers,* 15(4) J. of Acct., Ethics & Pub. Pol'y 902 at 915 (2014) (finding that 49 out of 160, or 30 percent, of non-accelerated filers that disclosed a material weakness in 2008 reported no material weaknesses in 2009, in contrast to 64 out of 83, or 77 percent, of accelerated filers in a similar situation). *See also* Jacqueline Hammersley, Linda Myers, & Jian Zhou, *The Failure to Remediate Previously Disclosed Material Weaknesses in Internal Controls,* 31(2) Auditing: J. Prac. & Theory 73 (2012); and Karla Johnstone, Chan Li, & Kathleen Rupley, *Changes in Corporate Governance Associated with the Revelation of Internal Control Material Weaknesses and their Subsequent Remediation,* 28(1) Contemp. Acct. Res. 331 (2011) (both finding a similar rate of remediation for accelerated filers for an earlier sample period).

a commenter,[467] survey evidence is also consistent with this requirement being associated with more effective ICFR. For example, this commenter cites a recent survey of public companies that found that 57 percent responded that one of the primary benefits of the ICFR auditor attestation requirement was ''improved internal control over financial reporting (ICFR) structure.'' [468]

To the extent that the ICFR auditor attestation requirement leads to more effective ICFR, this requirement may thereby lead to more reliable financial statements. Some studies have found that a failure to maintain effective ICFR has been associated with a higher rate of future restatements and lower earnings quality,[469] a higher rate of future fraud revelations,[470] more profitable insider trading,[471] and less accurate analyst forecasts.[472]

Generally, ICFR auditor attestations also have been found to be directly associated with financial statements that are more reliable than in the absence of these attestations.[473] We note, however, that two recent studies, using different methodologies, find evidence that conflicts with these other studies. In particular, the evidence in these studies, which use data from 2007 through 2013 [474] and 2014,[475] respectively, does not support the conclusion that the ICFR auditor attestation requirement is associated with more reliable financial statements, and one of the studies [476] even finds an association with lower reliability, consistent with concerns discussed in Section IV.B.1. above that the quality of audits of ICFR dropped at least temporarily after 2007.

To evaluate the economic implications of any effects the ICFR auditor attestation requirement has on ICFR and financial statements, we can consider factors such as production or investment at the issuer or market level. For example, at the issuer level, more reliable disclosures are generally expected, based on economic theory, to lead investors to demand a lower expected return to hold an issuer's securities (*i.e.,* a lower cost of capital).[477] A lower cost of capital may enhance capital formation by encouraging issuers to issue additional securities in order to raise funds for new investments. Empirically, material weaknesses in ICFR,[478] restatements,[479] and low earnings quality [480] have all been associated with a higher cost of debt or equity [481] capital.

More effective ICFR and more reliable financial reporting may also lead to improved efficiency of production if managers themselves thereby have access to more reliable data that facilitates better operating and investing decisions.[482] For example, one study finds that the investment efficiency of issuers improves, in that both under-investment and over-investment are curtailed, after the disclosure and remediation of material weaknesses.[483] Another study finds that issuers that remediate material weaknesses in ICFR that are related to inventory tracking thereafter experience higher inventory turnover, together with improvements in sales and profitability.[484] That said, it is difficult to generalize the results

[467] *See* letter from CII.

[468] *Id. See* also *Benchmarking SOX Costs, Hours and Controls,* Protiviti (June 24, 2019), available at *https://www.protiviti.com/sites/default/files/united_states/insights/2019_sarbanes_oxley_compliance_surveyprotiviti.pdf.*

[469] *See* Coates and Srinivasan 2014 Study, note 369 above, at 649–650.

[470] *See* Dain Donelson, Matthew Ege, & John McInnis, *Internal Control Weaknesses and Financial Reporting Fraud,* 36(3) Auditing: A J. of Prac. and Theory 45 (2017) (''Donelson *et al.* 2017 Study'') (finding that issuers with a material weakness in ICFR are 1.24 percentage points more likely to have a fraud revelation within the next three years compared to issuers without a material weakness, relative to a 1.60 percent unconditional probability of fraud).

[471] *See* Hollis Asbhaugh-Skaife, David Veenman, & Daniel Wangerin, *Internal Control over Financial Reporting and Managerial Rent Extraction: Evidence from the Profitability of Insider Trading,* 55(1) J. of Acct. and Econ. 91 (2013).

[472] *See, e.g.,* Sarah Clinton, Arianna Pinello, & Hollis Skaife, *The Implications of Ineffective Internal Control and SOX 404 Reporting for Financial Analysts,* 33(4) J. of Acct. and Pub. Pol'y 303 (2014).

[473] *See* 2011 SEC Staff Study, note 198 above, at 98–100. For more recent evidence, *see, e.g.,* Yuping Zhao, Jean Bedard, & Rani Hoitash, *SOX 404, Auditor Effort, and the Prevention of Financial Report Misstatements,* 36(4) Auditing: A J. of Prac. & Theory 151 (2017); and Lucy Chen, Jayanthi Krishnan, Heibatollah Sami, & Haiyan Zhou, *Auditor Attestation under SOX Section 404 and Earnings Informativeness,* 32(1) Auditing: A J. of Prac. & Theory 61 (2013).

[474] *See* Bhaskar *et al.* 2018 Study, note 305 above (finding that, among companies with less than $150 million in market capitalization, those providing auditor attestations of ICFR, whether voluntarily or because they are accelerated filers, had a higher rate of material misstatements and lower earnings quality than others in this category in the period from 2007 through 2013).

[475] *See* McCallen *et al.* 2019 Study, note 308 above (finding that, among companies with close to $75 million in public float, those above this threshold, which are likely subject to the ICFR auditor attestation requirement, do not experience lower restatements than those below this threshold in the period from 2007 through 2015).

[476] *See* Bhaskar *et al.* 2018 Study, note 305 above.

[477] *See, e.g.,* Douglas Diamond & Robert Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46(4) J. of Fin. 1325 (1991) (''Diamond and Verrecchia 1991 Study''); David Easley & Maureen O'Hara, *'Information and the Cost of Capital,'* 59(4) J. of Fin. 1553 (2004); Richard Lambert, Christian Leuz, & Robert Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,*'' 45(2) J. of Acct. Res. 385 (2007); and Christopher Armstrong, John Core, Daniel Taylor, & Robert Verrecchia, *When Does Information Asymmetry Affect the Cost of Capital?* 49(1) J. of Acct. Res. 1 (2011). We note that these articles also detail limited theoretical circumstances under which more reliable disclosures could lead to a higher cost of capital, such as in the case where improved disclosure is sufficient to reduce incentives for market making.

[478] *See, e.g.,* Dragon Tang, Feng Tian, & Hong Yan, *Internal Control Quality and Credit Default Swap Spreads*, 29(3) Acct. Horizons 603 (2015); Lawrence Gordon & Amanda Wilford, *An Analysis of Multiple Consecutive Years of Material Weaknesses in Internal Control,* 87(6) Acct. Rev. 2027 (2012) (''Gordon and Wilford 2012 Study''); and Ashbaugh-Skaife *et al.* 2009 Study, note 457 above. We note that earlier work did not detect an association between SOX Section 404 material weaknesses and the equity cost of capital. *See, e.g.,* M. Ogneva, K. R. Subramanyam, & K. Rachunandan, *Internal Control Weakness and Cost of Equity: Evidence from SOX Section 404 Disclosures,* 82(5) Acct. Rev. 1255 (2007) (''Ogneva *et al.* 2007 Study''). *See also* 2011 SEC Staff Study, note 198 above, at 101–102.

[479] *See, e.g.,* Paul Hribar & Nicole Jenkins, *The Effect of Accounting Restatements on Earnings Revisions and the Estimated Cost of Capital,* 9 Rev. of Acct. Stud. 337 (2004) (''Hribar and Jenkins 2004 Study'').

[480] *See, e.g.,* Jennifer Francis, Ryan LaFond, Per M. Olsson, & Katherine Schipper, *Cost of Equity and Earnings Attributes,* 79(4) Acct. Rev. 967 (2004) (''Francis *et al.* 2004 Study'').

[481] We note that empirical studies of the cost of equity capital face particular challenges in accurately measuring the cost of equity capital, which can reduce their reliability, but that this is mitigated in studies that look at changes over time, *see, e.g.,* Gordon and Wilford 2012 Study, note 478 above; Ashbaugh-Skaife *et al.* 2009 Study, note 457 above; and Hribar and Jenkins 2004 Study, note 479 above, rather than in the cross-section. *See, e.g.,* Ogneva *et al.* 2007 Study, note 478 above, and Francis *et al.* 2004 Study, note 480 above. *See also, e.g.,* Stephannie Larocque & Matthew R. Lyle, *Implied Cost of Equity Capital Estimates as Predictors of Accounting Returns and Stock Returns,* 2(1) J. of Fin. Rep. 69 (2017) (discussing concerns about measures of the cost of equity capital); and Charles M. C. Lee, Eric C. So, & Charles C. Y. Wang, *Evaluating Firm-Level Expected-Return Proxies,* Harvard Business School Working Paper 15–022 (2017) (finding that ''in the vast majority of research settings, biases in [equity cost of capital measures] are irrelevant'' and that the cost of equity capital measures used in the accounting literature ''are particularly useful in tracking time-series variations in expected returns'').

[482] *See, e.g.,* Ge *et al.* 2017 Study at 359, note 393 above (arguing that internal control misreporting leads to lower operating performance due to the non-remediation of ineffective controls, and estimating the degree of such underperformance based on the improvement shown by issuers that are non-accelerated filers after disclosing and remediating material weaknesses, relative to other such issuers that are suspected of having unreported material weaknesses).

[483] *See* Mei Cheng, Dan Dhaliwal, & Yuan Zheng, *Does Investment Efficiency Improve After the Disclosure of Material Weaknesses in Internal Control over Financial Reporting?,* 56(1) J. of Acct. and Econ. 1 (2013).

[484] *See* Mei Feng, Chan Li, Sarah McVay, & Hollis Skaife, *Does Ineffective Internal Control Over Financial Reporting Affect a Firm's Operations? Evidence From Firms' Inventory Management,*'' 90(2) Acct. Rev., 529 (2015) (''Feng *et al.* 2015 Study'').

beyond these samples to determine whether non-remediating issuers or issuers with different types of material weaknesses in ICFR could expect similar operational benefits from remediation. The ICFR auditor attestation requirement may also result in benefits at the market level, though these are more difficult to measure than those at the issuer level.[485] The potential for market-level impact is largely driven by network effects (which are associated with the broad adoption of practices) and by other externalities (*i.e.,* spillover effects on issuers or parties beyond the issuer in question). For example, to the extent that the ICFR auditor attestation requirement leads to more reliable financial statements at a large number of issuers, it may lead to a more efficient allocation of capital across different investment opportunities at the market level.[486] The ICFR auditor attestation requirement also can enhance capital formation to the extent that it improves overall investor confidence, for which there is some suggestive evidence,[487] and thus encourages investment in public markets.[488]

Many commenters cited the benefits that have been ascribed to the ICFR auditor attestation requirement in general and attested to their importance. For example, some stated that the ICFR auditor attestation requirement promotes more effective ICFR and more accurate ICFR disclosures,[489] including a greater likelihood and timeliness of disclosing ineffective or weak ICFR,[490] and that effective ICFR leads to better and more reliable financial statements,[491] audit quality,[492] and analyst forecasts [493] as well as fewer restatements, misstatements,[494] and instances of fraud and insider trading.[495] Others more directly linked the ICFR auditor attestation requirement with enhanced transparency,[496] a higher quality and reliability of issuers' financial statements,[497] and corporate governance [498] and a reduced number of restatements, misstatements,[499] and instances of fraud.[500] Some commenters noted that the ICFR auditor attestation requirement increases investor confidence generally [501] and that investors view the requirement as beneficial.[502]

Importantly, all of these benefits, at both the issuer and market level, likely vary across issuers of different types. For example, younger, loss-incurring issuers with lower market capitalization and lower institutional ownership, as well as those with more segments, tend to be more likely to newly disclose material weaknesses as they transition into the ICFR auditor attestation requirement.[503] However, the market appears to account for the association of material weaknesses with these and other observable issuer characteristics. Thus, issuers that have the characteristics associated with a higher rate of material weaknesses (and which investors may therefore value under the assumption that they are likely to have ineffective ICFR) but that receive an auditor attestation report that does not report any material weaknesses are found to have the greatest cost of capital benefit from such a report.[504] Small, loss-incurring issuers are also disproportionately represented amongst issuers that have allegedly engaged in financial disclosure frauds, indicating that any benefits in terms of investor protection and investor confidence may be particularly important for this population of issuers.[505] On the other hand, marginal changes in the reliability of the financial statements of issuers whose valuation is driven primarily by their future prospects—which could also include small, loss-incurring issuers—could have limited issuer- and market-level effects to the extent that the current financial statements of these issuers are less critical to assessing their valuation.[506]

b. Estimated Effects on ICFR, the Reliability of Financial Statements, and Potential Fraud

The academic literature discussed in Section IV.C.3.a. above suggests that the scrutiny associated with the ICFR auditor attestation may lead issuers that are required to obtain this attestation to maintain more effective ICFR and to remediate material weaknesses in ICFR more quickly, leading to more reliable financial statements. Further, as discussed above, studies have highlighted that smaller issuers are disproportionately represented in populations of issuers with ineffective ICFR and financial statements that require material restatement. In addition, smaller issuers are less likely to have significant external scrutiny in the form of analyst and media coverage and monitoring by institutional owners,[507] which could otherwise

[485] *See, e.g.,* Leuz and Wysocki 2016 Study, note 396 above (stating that researchers ''generally lack evidence on market-wide effects and externalities from regulation, yet such evidence is central to the economic justification of regulation'' and acknowledging that ''the identification of such market-wide effects and externalities is even more difficult than the identification of direct economic consequences on individual firms'').

[486] There is also some evidence that more reliable financial disclosures also facilitate a more effective market for corporate control, which can increase overall market discipline and thus enhance the efficiency of production by incentivizing more effective management. *See* Amir Amel-Zadeh & Yuan Zhang, *The Economic Consequences of Financial Restatements: Evidence from the Market for Corporate Control,* 90(1) Acct. Rev. 1 (2015). *See also* Vidhi Chhaochharia, Clemens Otto, & Vikrant Vig, *The Unintended Effects of the Sarbanes-Oxley Act,* 167(1) J. of Institutional and Theoretical Econ. 149 (2011).

[487] *See, e.g.,* 2013 GAO Study, note 297246 above (finding that 52 percent of the companies surveyed reported greater confidence in the financial reports of other companies due to the ICFR auditor attestation requirement; in contrast, 30 percent of the respondents reported that they believed this requirement raised investor confidence in their own company).

[488] For a further discussion of potential externalities, *see* Coates and Srinivasan 2014 Study, note 369 above, at 657–659.

[489] *See, e.g.,* letters from Better Markets, CFA, CII, Crowe, Grant Thornton, Prof. Barth *et al.,* and PWC.

[490] *See, e.g.,* letters from Better Markets, CFA, Crowe, and Prof. Barth *et al.*

[491] *See, e.g.,* letters from CAQ, CFA, CII, and Grant Thornton.

[492] *See, e.g.,* letter from CAQ.

[493] *See, e.g.,* letter from CFA.

[494] *See, e.g.,* letters from CAQ and CFA.

[495] *See, e.g.,* letter from CFA.

[496] *See, e.g.,* letter from EY.

[497] *See, e.g.,* letters from Better Markets, CFA, CII, Deloitte, EY, Grant Thornton, PWC, and RSM.

[498] *See, e.g.,* letter from Deloitte.

[499] *See, e.g.,* letters from CAQ, CFA Inst., Crowe, Deloitte, EY, Grant Thornton, and Prof. Barth *et al.*

[500] *See, e.g.,* letters from Better Markets and Deloitte.

[501] *See, e.g.,* letters from Better Markets, CAQ, CFA, and EY.

[502] *See, e.g.,* letters from CII, CFA Inst., and EY.

[503] *See* Ge *et al.* 2017 Study, note 393 above (regarding the term ''younger,'' this study defines company age as the number of years a company has been covered in the Compustat database). *See also* 2011 SEC Staff Study, note 198 above, at 96 (summarizing previous research finding that internal control deficiencies are associated with smaller, complex, riskier, and more financially-distressed issuers).

[504] *See* Ashbaugh-Skaife *et al.* 2009 Study, note 457 above.

[505] *See, e.g.,* COSO 2010 Fraud Study (finding that companies allegedly engaging in financial disclosure fraud in the period from 1998 through 2007 had median assets and revenue under $100 million and were often loss-incurring or close to breakeven) and *Characteristics of Financial Restatements and Frauds,* CPA J. (Nov. 2017), available at *www.cpajournal.com/2017/11/20/characteristics-financial-restatements-frauds/* (for more recent evidence).

[506] *See, e.g.,* Patricia Dechow & Catherine Schrand, *Earnings Quality,* Res. Found. of CFA Inst. 12 (2004) (''Dechow and Schrand 2004 Monograph'').

[507] *See, e.g.,* Joel Peress & Lily Fang, *Media Coverage and the Cross-Section of Stock Returns,* 64(5) J. of Fin. 2023 at 2030 (2009) (finding that ''firm size has an overwhelming effect on media coverage: large firms are much more likely to be covered''); Armando Gomes, Gary Gorton, & Leonardo Madureira, *SEC Regulation Fair Disclosure, Information, and the Cost of Capital,* 13 J. of Corp. Fin. 300 at 307 (2007) (stating that ''there is overwhelming evidence that size can explain analyst following''); and Eliezer Fich, Jarrad Harford, & Anh Tran, *Motivated Monitors: The Importance of Institutional Investors' Portfolio Weights,* 118(1) J. of Fin. Econ. 21 (2015) (finding

provide another source of discipline to maintain the reliability of financial statements. However, two of the studies cited above find that the ICFR auditor attestation requirement was not associated with more reliable financial statements for lower market capitalization issuers from 2007 through 2013 or 2014,[508] and the existing studies in general may not be directly applicable to current circumstances given the 2010 change in risk assessment auditing standards, the 2007 change in the ICFR auditing standard and other recent changes discussed in Section IV.B.1. above. Importantly, the existing literature and most of the results cited by commenters regarding the benefits of the ICFR auditor attestation also do not directly examine low-revenue issuers.

This section therefore provides an analysis of low-revenue issuers using recent data to complement the existing studies and better inform our consideration of the possible costs of the amendments. However, some uncertainty will remain due to the challenges discussed above in measurement and in ascribing causality in any such analysis, the limited sample sizes that result when restricting the analysis to recent years, and the general difficulty of predicting how the parties involved will react to the amendments. As discussed in more detail in the Proposing Release,[509] our analysis includes an examination of two comparison populations of issuers that are not subject to the ICFR auditor attestation requirement but that otherwise have similar responsibilities with respect to ICFR (*i.e.,* non-accelerated filers, other than EGCs, and EGCs), with consideration given to the ways in which these issuers differ from the affected issuers.

One commenter suggested that we should more carefully consider the audit risks linked to specific industries that are expected to be affected by the amendments, highlighting the banking industry as one that may have special considerations.[510] We note that, as discussed above, the majority of the affected banking issuers are expected to remain subject to the FDIC auditor attestation requirement and therefore are not expected to be significantly affected by the amendments. Further, because of the small sample of affected issuers, we have a limited ability to split our sample and maintain statistical reliability. However, our aggregate estimates should reflect the overall diversity in the population of affected issuers.

Another commenter indicated that the primary quantifiable cost of an exemption from the ICFR auditor attestation requirement stems from misreporting regarding the effectiveness of ICFR.[511] While we consider this effect and its quantifiable implications in more detail below, we continue to believe that the incentive provided by the ICFR auditor attestation requirement to actually maintain better controls (versus just to more accurately report their status) remains a key benefit with certain quantifiable implications that could be lost due to an exemption from this requirement.

i. Effects on the Prevalence of Ineffective ICFR

We first consider possible effects related to the effectiveness of the affected issuers' ICFR. In the Proposing Release, we presented an analysis of the rate of ineffective ICFR from 2014–2018 among low-revenue issuers that are subject to the ICFR auditor attestation requirement compared to low-revenue issuers not subject to this requirement.[512] In particular, we compared the reported rate of ineffective ICFR in these recent years for accelerated filers that are subject to the ICFR auditor attestation requirement and have revenues of less than $100 million, relative to the reported rate of ineffective ICFR for issuers in our comparison populations (non-accelerated filers, other than EGCs, and EGCs, neither of which is required to comply with the ICFR auditor attestation requirement) that also have revenues of less than $100 million. We focused on SOX Section 404(a) management reports on ICFR, with the caveat that management may not report as many material weaknesses in the absence of an audit of ICFR.[513] Based on this analysis, and with consideration for the difference in size, maturity, and overall resources of the affected issuers versus the comparison sample, we estimated that an additional 15 percent of the affected issuers may fail to maintain effective ICFR.[514] We did not receive comment on this specific estimate or comments providing data or methodologies that would improve our estimate. Our estimate is consistent with the estimated effect on ICFR based on a study of issuers transitioning into the ICFR auditor attestation requirement.[515] We do not expect the full estimated effect to be experienced immediately upon effectiveness of the amendments. Instead, as discussed in detail at the end of this section, we expect a movement towards this higher rate of ineffective ICFR over time as some of the affected issuers make incremental changes in their investment in ICFR and as additional issuers enter the category of affected issuers.

ii. Effects on the Detection and Disclosure of Material Weaknesses in ICFR

Because the previous analysis focuses on disclosed rates of ineffective ICFR, it does not address the extent to which the amendments may affect the detection and disclosure of material weaknesses

that institutional monitoring is greatest when a company represents a significant allocation of funds in the institution's portfolio, which is strongly associated with company size).

[508] *See* Bhaskar *et al.* 2018 Study, note 305 above, as discussed in note 474 above, and McCallen *et al.* 2019 Study, note 308 above, as discussed in note 475 above.

[509] *See* Sections III.C.2. and III.C.4. of the Proposing Release, note 4 above.

[510] *See* letter from CFA Inst.

[511] *See* letter from Prof. Ge *et al.*

[512] *See* Section III.C.4.b. of the Proposing Release, note 4 above.

[513] We separately consider this potential under-reporting of material weaknesses in the analysis below.

[514] *See* Section III.C.4.b. of the Proposing Release, note 4 above. We also noted in this section of the Proposing Release, note 4 above, that our findings may not be surprising, as certain material weaknesses in ICFR may be corrected by, for example, hiring additional staff, which managers of an issuer that is not currently producing much revenue may prefer to defer to a later time. Indeed, about 80 to 85 percent of the low-revenue issuers reporting ineffective ICFR in the comparison populations in 2017 reported at least one staffing-related material weakness, though these were generally accompanied by other types of material weaknesses. *See* note 259 of the Proposing Release, note 4 above, and the accompanying text.

[515] *See* Ge *et al.* 2017 Study, note 393 above, at 372 (finding that 62.5 percent of companies that reported material weaknesses as non-accelerated filers remediate such weaknesses upon entering accelerated filer status). To compare the result from this study to our estimate, note that we find in Table 7 above that about nine percent of accelerated filers report ineffective ICFR (further, the Proposing Release, note 4 above, found that the rate was similar for low and high revenue issuers). Our estimate of an additional 15 percentage points of the affected issuers reporting ineffective ICFR in the absence of an ICFR auditor attestation requirement would lead to a total of 24 percent (nine percent plus 15 percent) of the issuers reporting material weaknesses in ICFR in the absence of the requirement as compared to nine percent reporting material weaknesses in ICFR when subjected to the requirement. This is the same result one would get by applying the 62.5 percent remediation estimate from the cited study. In other words, if 62.5 percent of the issuers reporting material weaknesses in the absence of the ICFR auditor attestation requirement remediated their material weaknesses upon entering accelerated filer status and becoming subject to the requirement, that would mean that the rest of the issuers (37.5 percent) failed to remediate when becoming subject to the requirement. This would imply that a 24 percent rate of ineffective ICFR reported by the issuers in the absence of the requirement would correspond to a nine percent rate (24 percent times 37.5 percent) of ineffective ICFR reported by the issuers when subjected to the requirement.

in ICFR. As discussed in Section IV.C.3.a. above, studies have found that audits of ICFR often result in the identification and disclosure of material weaknesses that were not previously identified or whose severity was misclassified in management's initial assessment. Thus, extending the exemption from the ICFR auditor attestation requirement to the affected issuers may decrease the likelihood that, when these issuers have underlying material weaknesses in ICFR, these material weaknesses are detected and disclosed.

In the Proposing Release, we noted that low-revenue issuers may be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation, perhaps because they have less complex financial systems and controls.[516] Consistent with this hypothesis, we found that the low-revenue issuers that are not subject to the ICFR auditor attestation requirement report relatively high rates of ineffective ICFR despite these reports not being subject to the additional scrutiny of an ICFR auditor attestation.

In the Proposing Release, we did not quantitatively estimate a potential effect on the detection and disclosure of material weaknesses in ICFR, though we did qualitatively consider how the amendments could affect issuers depending on their proclivity to detect and disclose underlying material weaknesses in the absence of an ICFR auditor attestation.[517] Several commenters indicated that they expected the amendments to affect the detection and disclosure of material weaknesses in ICFR,[518] with one stating that ''the primary quantifiable cost of 404(b) attestation exemption arises from internal control misreporting.'' [519] Further, other commenters noted that factors other than the complexity of issuers' systems and controls, such as their accounting personnel resources [520] or the intricacies of the issuers' business and industry, the strength of their governance, the competency of their management, and their international reach,[521] should be considered in assessing the risk of misreporting with respect to ICFR effectiveness. In response to these comments, we conducted a quantitative estimation of this effect and its potential implications.

Because undetected and undisclosed material weaknesses cannot be directly observed, we are not able to directly estimate the extent of such issues in our comparison samples of low-revenue issuers that are not subject to the ICFR auditor attestation requirement. Instead, we rely on a recent study that estimates that an incremental 3.5 percent of issuers misreport their ICFR as being effective when not subject to the ICFR auditor attestation requirement as compared to when they are subjected to this requirement.[522] To obtain this estimate, the study uses the characteristics associated with ineffective ICFR to predict the actual rate of ineffective ICFR as opposed to the disclosed rate of ineffective ICFR, and uses changes in reporting around transitions into accelerated filer status to predict the proportion of suspected misreporters that would correctly report under an ICFR auditor attestation requirement.[523]

We directly apply the results from the study and estimate that 3.5 percent of the affected issuers that will be newly exempt from all ICFR auditor attestation requirements may misreport that their ICFR is effective, but would not misreport if subjected to those requirements. To be conservative, we do not adjust this estimate based on our conjecture that low-revenue issuers may be less likely than other issuers to fail to detect and disclose material weaknesses in the absence of an ICFR auditor attestation, perhaps because they have less complex financial systems and controls. However, we note that the estimate may be somewhat inflated to the extent that this conjecture is correct.

iii. Effects on Restatements

We next consider the extent to which the possible effects on reported and unreported material weaknesses in ICFR might translate into less reliable financial statements. By definition, material weaknesses represent a reasonable possibility that a material misstatement of the issuer's financial statements will not be prevented or detected on a timely basis,[524] and as discussed above, existing studies have demonstrated that ineffective ICFR are associated with less reliable financial statements. Thus, our estimated increase in the rate of ineffective ICFR likely would translate into a decrease in the reliability of the financial statements of the affected issuers. However, low-revenue issuers could be less susceptible, on average, to at least certain kinds of misstatements. In particular, 10 to 20 percent of restatements and about 60 percent of the cases of financial disclosure fraud in recent times have been associated with improper revenue recognition,[525] which is less of a risk, for example, for issuers that currently have no revenues.

We explored this possibility empirically in the Proposing Release, by comparing the percentage of issuers in different categories that eventually restated some of the financial statements that they reported for a given year, for the years 2014 through 2016. Because we directly considered differences in actual restatements across these groups of issuers, these results should incorporate the effects of differences across the groups in both reported and unreported material weaknesses in ICFR. Our analysis demonstrated that issuers with revenues of less than $100 million have, on average, restatement rates that are three to nine percentage points lower than those for higher-revenue issuers of the same filer status.[526] This result is consistent with low-revenue issuers being less likely to make restatements, even when they experience high rates of ineffective ICFR, perhaps because they are less susceptible to certain kinds of misstatements (such as those related to revenue recognition).

[516] *See* 2017 SICPG Survey Report, note 419 above, at 6 (finding that 33 percent of survey respondents with revenues of $75 million or less reported that they manage no more than 100 total controls, as compared to 13 percent of those with revenues of $76 to $700 million and zero percent of those with revenues greater than $700 million).

[517] *See* Section III.C.4.c of the Proposing Release, note 4 above.

[518] *See, e.g.,* letters from CFA Inst., EY, and Prof. Ge *et al.*

[519] *See* letter from Prof. Ge *et al.*

[520] *See* letters from CAQ and EY.

[521] *See* letter from RSM.

[522] *See* Ge *et al.* 2017 Study, note 393 above (estimating, based on data from 2007 through 2014, that 9.3 percent of non-accelerated filers incorrectly report their ICFR to be effective and that 38.1 percent of these, or 3.5 percent, would correctly report their ICFR to be ineffective if subjected to the ICFR auditor attestation requirement).

[523] *Id.*

[524] *See* Regulation S–X Rule 1–02(a)(4).

[525] *See* Audit Analytics, *2017 Financial Restatements: A Seventeen Year Comparison,* (May 2018), available at *https://blog.auditanalytics.com/2017-financial-restatements-review/,* and COSO 2010 Fraud Study, note 505 above.

[526] *See* Section III.C.4.b. of the Proposing Release, note 4 above. As discussed in the Proposing Release, note 4 above, while observed restatements reflect misstatements that were detected and may only be a subset of actual misstatements, we believe that the lower restatement rates for low-revenue issuers are not driven by a difference in the ability to detect misstatements among these categories because we see this pattern for issuers with low rates of ineffective ICFR as well as for other issuers. This result is also consistent with the BIO Study, which finds that biotechnology EGCs have a two to three percentage point lower restatement rate than other non-accelerated or accelerated filers and attribute this to their ''absence of product revenue.'' *See* BIO Study, note 69 above (finding a 6.20 percent restatement rate for biotechnology EGCs compared to rates of 7.98 percent and 9.25 percent for other non-accelerated and accelerated filers respectively).

A number of commenters maintained that the risks of financial statement restatements or misstatements are greater for the issuers that would not be subject to the ICFR auditor attestation requirement under the proposed amendments than for other issuers.[527] A few of these commenters cited research that concludes that, since 2003, non-accelerated U.S. filers accounted for 62 percent of the total U.S. financial statement restatements.[528] However, we note that this research is not specific to low-revenue issuers, unlike our analysis. As our analysis in the Proposing Release demonstrated, restatements are less frequent for low-revenue issuers even among non-accelerated filers. Further, the cited research does not adjust for the high proportion of non-accelerated filers among all issuers.

Other commenters noted that low-revenue issuers may be more susceptible to misstatements in revenue recognition [529] or in areas other than revenue recognition,[530] and that a higher risk of misstatements may be driven by characteristics of these issuers other than their low revenue, such as their lower resources or fewer personnel,[531] complex transactions or arrangements,[532] or activities that require significant accounting judgments.[533] We note that our analysis is intended to capture all of these risks of restatements, by directly comparing rates of empirical restatements, and that we still find that the lower revenue issuers, taken in aggregate, are less likely to restate their financial statements than other issuers of the same filer status. Thus, while certain subsets of the affected issuers may be more prone to restatements than others based on their specific characteristics, on average the affected issuers as a group appear to have a lower overall risk of restatement than higher-revenue issuers.

However, in response to the comments, we further examine the argument that the affected issuers may be less susceptible to certain kinds of misstatements, such as those related to revenue recognition, by examining the types of restatements among low- and higher-revenue accelerated filers other than EGCs in Table 11.[534] We note that the categorization of types and the names of these categories are based on the categories and category titles provided in the Ives Group Audit Analytics restatement database.

TABLE 11—PERCENTAGE OF ALL ACCELERATED FILERS OTHER THAN EGCS WITH RESTATEMENTS OF DIFFERENT TYPES, BY REVENUE CATEGORY, FOR FINANCIAL STATEMENTS FROM 2014–2018

Restatement type	Accelerated filers (ex. EGCs)		
	Revenue <$100M	Revenue ≥$100M	Relative percentage
Revenue recognition issues	1.3	3.3	40
Cash flows statement (SFAS 95) classification errors	1.0	1.7	60
Tax expense/benefit/deferral/other (FAS 109) issues	1.0	2.4	42
Inventory, vendor and/or cost of sales issues	0.8	1.8	45
Debt, quasi-debt, warrants & equity (BCF) security issues	0.7	0.6	115
Liabilities, payables, reserves and accrual estimate failures	0.7	1.9	37
Accounts/loans receivable, investments & cash issues	0.7	1.3	53
Expense (payroll, SGA, other) recording issues	0.6	1.5	43
Acquisitions, mergers, disposals, re-org acct issues	0.5	0.9	55
Acquisitions, mergers, only (subcategory) acct issues	0.4	0.6	65
Deferred, stock-based and/or executive comp issues	0.4	0.5	85
EPS, ratio and classification of income statement issues	0.3	0.6	53
Balance sheet classification of assets issues	0.3	0.4	77
Lease, SFAS 5, legal, contingency and commitment issues	0.3	0.6	53
Foreign, related party, affiliated, or subsidiary issues	0.3	0.7	34

Table 11 presents the percentage of low-revenue and higher-revenue accelerated filers other than EGCs restating their financial statements under a particular category of restatement for a given year from 2014 through 2018. The table presents the results for the 15 most common restatement categories for low-revenue accelerated filers other than EGCs. Restatements can fall into more than one category, so the total of these percentages across all restatement categories would exceed the average rate of restatements. We also report the relative percentage of the restatement rate in a given category among the low-revenue issuers relative to the higher-revenue issuers.

Table 11 demonstrates that 1.3 percent of low-revenue accelerated filers other than EGCs restated their financial statements for a given year from 2014 to 2018 due to revenue recognition issuers, representing about 40 percent of the rate of this type of restatement among higher-revenue accelerated filers other than EGCs. Similarly, for the next three most common categories of restatements for low-revenue accelerated filers other than EGCs, the restatement rates of these issuers represented 42– to 60 percent of the corresponding rates among higher-revenue accelerated filers other than EGCs. Thus, this evidence supports our belief that the affected issuers may be less susceptible to certain kinds of misstatements, such as those related to revenue recognition. However, consistent with commenters concerns about other sources of misstatements, particularly with respect to complex contracts and arrangements, we find that the rate of restatements in some other categories is more similar across the two groups. For example, the rate of restatements related to ''Debt, quasi-debt, warrants & equity (BCF) security

[527] *See, e.g.,* letters from Better Markets, CAQ, EY, Grant Thornton, IMA, Prof. Barth *et al.,* and RSM.

[528] *See, e.g.,* letters from CAQ and CFA Inst.

[529] *See, e.g.,* letters from Better Markets and Prof. Barth *et al.*

[530] *See, e.g.,* letter from BDO.

[531] *See, e.g.,* letters from CAQ, Crowe, EY, and Grant Thornton.

[532] *See, e.g.,* letter from BDO.

[533] *See, e.g.,* letters from CFA Inst. and BDO.

[534] These estimates are based on staff analysis of data from Ives Group Audit Analytics. *See* note 298 above for details on the identification of filer type. The sample includes 2,017 issuer-year level observations that have low revenues and 3,862 issuer-year observations that have higher revenues.

issues'' and ''Deferred, stock-based and/or executive comp issues'' for the low-revenue issuers represent 115 percent and 85 percent respectively of the corresponding rates among the higher-revenue issuers. However, the rate of restatements is greater for the low-revenue issuers as compared to higher-revenue issuers only in the ''Debt, quasi-debt, warrants & equity (BCF) security issues'' category, and only by a small margin: The restatement rates in this category are within 0.1 percentage points of each other, such that they are not statistically differentiable in our sample.[535]

We therefore continue to believe that the evidence supports our hypothesis that the affected issuers are less likely to make restatements, perhaps because they are, on average, less susceptible to certain kinds of misstatements (such as those related to revenue recognition), than other accelerated filers. While this finding may mitigate the adverse effects on the reliability of financial statements for the affected issuers that will newly be exempt from all ICFR auditor attestation requirements, we nonetheless expect some such effects. Based on the analysis in the Proposing Release, and with consideration for the difference in size and maturity of the affected issuers versus the comparison sample, we estimated that the rate of restatements among the affected issuers may increase by two percentage points.[536] Given their lower current rates of restatement, even after such an increase the affected issuers may, on average, restate their financial statements at a rate that is lower than that of issuers that will remain accelerated filers, and that does not exceed that of non-accelerated filers and EGCs with comparable revenues.

Several commenters indicated that we should have given consideration to the magnitude of restatements.[537] In response to these comments, we have undertaken two types of analysis. First, we consider the potential effects on restatements that are deemed by issuers to be material. To do this, we begin by repeating our analysis for all types of restatements from the Proposing Release for the subset of Item 4.02 restatements, which, as discussed above, are the restatements that issuers deem to be material and report in Form 8–K Item 4.02 disclosures, in Table 12.[538]

TABLE 12—PERCENTAGE OF ISSUERS ISSUING ITEM 4.02 RESTATEMENTS BY YEAR OF RESTATED FINANCIALS, BY REVENUE CATEGORY

Restated year	Accelerated (ex. EGCs)	Non-accelerated (ex. EGCs)	EGC
Revenue <$100M:			
2014	2.4	3.9	5.8
2015	3.5	3.1	4.2
2016	3.3	2.6	3.4
Average/year	*3.0*	*3.2*	*4.5*
Revenue ≥$100M:			
2014	4.1	4.7	2.7
2015	3.7	4.3	8.7
2016	2.4	2.3	2.6
Average/year	*3.4*	*3.8*	*4.7*
Difference in average/year	*− 0.4*	*− 0.6*	*− 0.2*

Table 12 demonstrates that, among low-revenue issuers, the accelerated filers other than EGCs have a 0.2 percentage point (relative to non-accelerated filers other than EGCs) or 1.5 percentage point (relative to EGCs) lower rate of Item 4.02 restatements than the issuers in the comparison populations, which are not subject to the ICFR auditor attestation requirement. Following our analysis in the Proposing Release, given the difference in size and maturity of the affected issuers versus the comparison samples, we look to the lower end of this range and, with rounding, estimate that the rate of Item 4.02 restatements among the affected issuers may increase by 0.5 percentage points. Given how low the rates of Item 4.02 restatements are, the sample sizes in Table 12 are not sufficient to reliably differentiate between these rates. We are nevertheless comfortable with this estimate because it is consistent with the estimate that would be obtained by applying the average rate of Item 4.02 restatements out of all restatements, per Table 9 above,[539] to our estimate of the effect on total restatements.

This estimate of the effects on restatements that issuers deem to be material may help to provide some perspective on the magnitude of the anticipated effect. We provide further analysis of these magnitudes by exploring the market and financial statement impacts of the estimated effect on restatements. Table 15 in Section IV.C.3.c below provides related estimates per Item 4.02 restatement for low-revenue, seasoned issuers. In particular, the average net income impact for Item 4.02 restatements is estimated to be −$1.9 million per year of restated financials for the 80 percent of cases where there is a net income impact, which is −$1.9 million times 80 percent or −$1.5 million on average across all cases. The average stock market impact is estimated to be −$1.4

[535] There is also a slightly higher rate of restatements without a specified category among the low-revenue issuers, with 0.1 percent of their issuer-year level observations being associated with ''Unspecified (amounts or accounts) restatement adjustments'' compared to 0.0 percent among the higher-revenue issuers.

[536] *See* Section III.C.4.b. of the Proposing Release, note 4 above.

[537] *See, e.g.,* letters from Better Markets, CFA Inst., and Prof. Barth *et al.*

[538] The estimates in this table are based on staff analysis of Ives Group Audit Analytics data. Percentages are computed out of all issuers of a given filer type and revenue category with revenue data and a SOX Section 404(a) management report available in the Ives Group Audit Analytics database. The accelerated and non-accelerated categories exclude EGCs. See note 298 above for details on the identification of filer type.

[539] The ratio of Item 4.02 restatements to all restatements in Table 7 ranges from 15 percent for large accelerated filers other than EGCs (1.6 percent divided by 10.6 percent) up to 35 percent for non-accelerated filers other than EGCs (2.9 percent divided by 8.5 percent). Applying these rates to our estimated 2 percentage point effect on total restatements would result in an estimate of a 0.3 to 0.7 percentage point effect on Item 4.02 restatements.

million divided by 1.4 years or −$1 million per year of restated financials. We multiply these estimates by our estimate that an additional 0.5 percentage points of the affected issuers may have an Item 4.02 restatement of their financial statements for a given year to obtain estimates of −$7,500 in net income impact or −$5,000 in stock market impact per year per affected issuer that will newly be exempt from all ICFR auditor attestation requirements.

One commenter provided alternative estimates of the magnitude of the effect on restatements, estimating that the affected issuers restated a total of $295 million in net income over the five years from 2014 through 2018 and that the 2018 restatements reduced market capitalizations by $294 million in aggregate.[540] We do not rely on these estimates for two primary reasons. First, these estimates reflect restatements that have occurred while these issuers are subject to the ICFR auditor attestation requirement.[541] They do not provide us with information about the magnitude of new restatements that would be experienced if this requirement were to be removed. The use of this estimate would reflect an assumption that restatements would increase by 100 percent upon removal of the ICFR auditor attestation requirement, and we do not believe that there is evidence to support such an assumption. If anything, these estimates demonstrate the limitations of the ICFR auditor attestation requirement, in that significant restatements still occur despite the requirement, rather than informing us of the risks of removing the requirement.

Secondly, these estimates reflect the years in which restatements were announced rather than when the actual misstatement occurred. Effective ICFR is intended to reduce the risk of material misstatements, so we believe it is important to focus on when misstatements occurred, not when earlier misstatements were detected and announced, which could actually be a sign of a careful audit and effective ICFR. Focusing on the year of the restatement announcement rather than the year of the misstatement could capture firms that may not have qualified as affected issuers during the time the misstatements were made, but only dropped into the category of affected issuers because of the reduction in public float or revenue that resulted from the major restatement and related issues.[542] In contrast to the commenter's analysis, our analysis is designed to measure the rate and magnitude of the incremental restatements that can be attributed to misstatements in years in which the issuers would qualify under the amendments to be exempt from the ICFR auditor attestation requirement and that would not have occurred if the issuers were subjected to this requirement.

iv. Effects on Fraudulent Financial Reporting

Several commenters indicated that we should give additional consideration to the potential impacts of the amendments on the risk of fraud.[543] Further, a number of commenters cautioned that the risks of fraudulent financial reporting may be particularly high for low-revenue issuers,[544] perhaps because of their incentives to demonstrate strong growth [545] or because of their high implied price-to-revenue multiples.[546] As part of our consideration of these comments, we conducted certain supplemental analysis regarding the risk of fraudulent financial reporting. That analysis, discussed below, provides additional context for considering the possible effects of the amendments. We note that commenters did not provide their own analyses or suggest specific methodologies for estimating any potential impact of the amendments on the risk of fraud.

We acknowledge that fraudulent misconduct does occur, including at low-revenue issuers, and that the incentives to engage in such misconduct could be heightened for certain low-revenue issuers, depending on their specific situation. It is less clear what the average risk of fraud is across low-revenue issuers in general, and how this overall risk may be affected by the ICFR auditor attestation requirement. Measuring these effects is challenging because the sample sizes associated with typical measures of fraud are small, making reliable statistical determinations difficult. Further, we do not have an observable measure of all latent fraudulent conduct, but can only examine fraud that has been detected and that led to some observable action, which may not be a representative sample of all actual fraudulent activity. However, we acknowledge that it is important to carefully consider the potential impact of the amendments on the risk of fraud. We therefore use the available evidence and data to analyze this risk.

We start by considering Accounting and Auditing Enforcement Releases (''AAERs'') [547] and cases of ''financial misconduct'' or ''financial reporting fraud'' based on subsets of these enforcement actions, as discussed below. A commenter noted that the Proposing Release did not consider the historical rate of fraud, the incidence of AAERs, the incidence of Wells notices and of formal SEC investigations.[548] While ''fraud'' may be defined in different ways, our analysis below considers the historical rate of fraud, based on analysis of a subset of AAERs, and the incidence of AAERs. We believe that these are more appropriate measures of potential fraud risk, as they reflect incidents in which the Commission proceeded with charges. In contrast, formal investigations and Wells notices do not always uncover, and/or result in charges of, wrongdoing.[549] The small sample size of

[540] *See* letter from Prof. Barth *et al. See also* letter from Better Markets, citing these estimates.

[541] Similarly, one commenter cites charges of misconduct at a low-revenue issuer and argues that ''a well-designed ICFR audit might have uncovered the control deficiencies, and related revenue recognition violations, more quickly.'' *See* letter from CFA. However, based on its EDGAR filings, the issuer was in fact subject to the ICFR auditor attestation requirement in fiscal year 2014, the beginning of the period of alleged misconduct (and may have been subject to the requirement in the remainder of the period of alleged misconduct as well, but did not file Form 10–K in the following year), and the auditor's report in the associated Form 10–K attested that the issuer's ICFR was effective.

[542] For example, a media report identified a particular issuer included in one commenter's analysis of significant restatements among issuers that were proposed to be exempted. *See* Dave Michaels, *SEC Plan Gives Audit Relief to Firms that Wiped Out over $290 Million,* Wall St. J., July 26, 2019. *See also* letter from Prof. Barth *et al.* (providing statistics but not identifying specific issuers). Based on its EDGAR filings, the identified issuer had revenues substantially in excess of $100 million, even after the revisions described in the article, for fiscal years 2015 and 2016 (the periods with misstatements that were later restated). Further, this issuer was subject to the ICFR auditor attestation requirement as a large accelerated filer in 2015 and an accelerated filer in 2016. Therefore, we do not believe the amendments, if effective during those fiscal years, would have exempted this issuer from the ICFR auditor attestation requirement during the period in which the misstatements were made.

[543] *See, e.g.,* letters from CFA Inst., CII, and Prof. Barth *et al.*

[544] *See, e.g.,* letter from CFA, CFA Inst., CII and Prof. Barth *et al.*

[545] *See, e.g.,* letter from CFA.

[546] *See, e.g.,* letters from CII and Prof. Barth *et al.*

[547] AAERs refer to certain financial reporting related enforcement actions concerning civil lawsuits brought by the Commission in federal court and notices and orders concerning the institution and/or settlement of administrative proceedings. Links to these releases since 1999 are available at *https://www.sec.gov/divisions/enforce/friactions.shtml.*

[548] *See* letter from Prof. Barth *et al.*

[549] *See* David Solomon and Eugene Soltes, *Is ''Not Guilty'' the Same as ''Innocent''? Evidence from SEC Financial Fraud Investigations,* Working Paper (2019), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3402780* (finding that, for

Continued

AAERs limits our ability to apply the methodology we used to estimate the potential impact on the prevalence of ineffective ICFR and the rate of restatements [550] to reliably estimate a potential effect on the incidence of AAERs. Instead, we begin by examining the representation of low-revenue as compared to higher-revenue issuers in the population of issuers with AAERs or subsets of AAERs that include certain types of charges, as compared to their representation in the broader population of issuers, in order to investigate commenters concerns that the affected issuers may face particularly high risks of fraudulent financial reporting. We then separately apply results from existing studies on fraudulent financial reporting to obtain an estimate of the potential impact of the amendments on such misconduct.

Because the overall sample size of AAERs is limited, we use the full sample of years for which data is available, such that the alleged misconduct we analyze ranges from fiscal year 1971 to 2016 (based on AAERs issued from 1982 through 2018). We focus on issuers that are not within five years of their IPO (''seasoned issuers'') to better represent the affected issuers. Revenues are measured as of the date of the first misstated financial statements associated with an AAER, rather than at the date of the enforcement action, which is generally many years after this date.[551]

TABLE 13—REPRESENTATION OF LOW-REVENUE AND HIGHER-REVENUE SEASONED ISSUERS IN THE POPULATION AND AMONG THOSE WITH AAERS

	Among issuers not within 5 years of IPO *	
	Percent with revenue <$100M	Percent with revenue ≥$100M
Total issuer-year level observations with revenue data **	50	50
Issuers with AAERs:		
With alleged ''financial misstatements'' ***	42	58
and with ''financial misconduct'' charges ****	24	76
and with ''financial reporting fraud'' charges *****	30	70

* The years after an issuer's IPO are computed as of the first date of the financial statements associated with the AAERs.

** This row includes data for fiscal years from 1971 through 2016 to reflect the full horizon of years of alleged misconduct identified in the U.S.C. Marshall AAER Database. As noted below, data on ''financial misconduct'' charges and ''financial reporting fraud'' charges was only collected for AAERs issued from 2002 through 2018. While these charges represent alleged misconduct dating back to as early as 1985, they are more likely to reflect relatively more recent years than those reflected in the full sample of AAERs. We therefore note, for the purpose of consideration of the last two rows of Table 13, that the percentage of low-revenue issuers among the total issuer-year observations of seasoned issuers with revenue data is reduced somewhat in the more recent part of this sample, to about 47 percent when considering data from fiscal years 1985 through 2016 or about 42 percent when considering data from fiscal years 2000 through 2016.

*** This row represents AAERs that the U.S.C. Marshall AAER Database indicates as being associated with alleged financial misstatements.

**** This row represents AAERs among those included in the previous row that also include charges under Section 13(b)(2)(A) (requiring issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer), Section 13(b)(2)(B) (requiring an issuer to devise and maintain a system of internal accounting controls sufficient to provide certain reasonable assurances), or Section 13(b)(5) (requiring that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account) of the Securities Exchange Act, or Rules 13b2–1 (requiring that no person directly or indirectly, falsify or cause to be falsified, any book, record or account) or 13b2–2 (requiring certain representations and conduct by directors and officers in connection with the preparation of required reports and documents) under the Securities Exchange Act. We only supplemented the U.S.C. Marshall AAER Database with information about these specific charges where applicable for AAERs issued from 2002 through 2018 (which include alleged misconduct associated with financial statements from fiscal year 1985 through 2016), so the set of AAERs considered in the computations in this row reflect a substantially smaller population of AAERs than those included in the second row of this table, which includes earlier AAERs (issued beginning in 1982). Our estimates do not significantly change if we remove charges associated only with third parties rather than the issuer in question and/or its staff from the sample before running the analysis.

***** This row represents AAERs among those included in the previous row that also include charges under the anti-fraud statutes in Section 17(a)(1) of the Securities Act or Section 10(b) of the Securities Exchange Act. *See also* note **** above regarding limitations on the population of AAERs for which we supplemented the U.S.C. Marshall AAER Database with information on these charges. Our estimates do not significantly change if we remove charges associated only with third parties rather than the issuer in question and/or its staff from the sample before running the analysis.

In Table 13, we consider all AAERs with alleged financial misstatements (row 2), as well as two subsets of these AAERs that we identify for those issued in, roughly, the past two decades.[552] The first subset (row 3) represents those that we can identify as including charges under Section 13(b)(2)(A), Section 13(b)(2)(B), or Section 13(b)(5) of the Securities Exchange Act, or Rules 13b2–1 or 13b2–2 under the Securities Exchange Act. These cases have been identified by researchers as representing ''financial misconduct.'' [553] The second

financial fraud investigations by the Commission between 2002 and 2005, only 25 percent resulted in enforcement actions); and Jean Eaglesham, *SEC Drops 20% of Probes After ''Wells Notice,''* Wall St. J., Oct. 9, 2013 (reporting that, for the two-year period that ended in September 2012, 20 percent of the Wells notices issued were associated with investigations that were later closed without taking action being taken against the indicated parties). *See also* Terrence Blackburne, John Kepler, Phillip Quinn and Daniel Taylor, *Undisclosed SEC Investigations,* Working Paper (2019), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3507083* (finding that, for Commission investigations that were closed between 2000 and 2017, only 44 percent were eventually publicly disclosed, though the study does not identify the subset of these cases involving charges or any action being taken).

[550] *See* Tables 13 and 14 of the Proposing Release, note 4 above, and the accompanying text.

[551] The estimates in Table 13 are based on staff analysis of the U.S.C. Marshall AAER Database, which contains information on AAERs issued between May 1982 and December 2018, supplemented with information from AAERs (for a smaller sample, as discussed below) and data from Compustat. Multiple AAERs associated with the same financial statement years are treated as a single case. Consecutive years of financial statements associated with AAERs are also treated as a single case.

[552] The population of AAERs considered in these subsets is limited to those issued from 2002 through 2018. *See* Table 13 above.

[553] *See* Jonathan Karpoff, Allison Koester, D. Scott Lee, and Gerald Martin, *Proxies and Databases in Financial Misconduct Research,* 92(6) Acct. Rev. 129 (2017) (''Karpoff *et al.* 2017 Study''). This study also raised concerns about omissions in the U.S.C. Marshall AAER Database, which they refer to as the CFRM database, but they noted that they understood that this issue was being addressed and

subset (row 4) is the subset of the ''financial misconduct'' cases that we can identify as also including charges under Section 17(a)(1) of the Securities Act or Section 10(b) of the Securities Exchange Act, which is one common way of identifying cases of ''financial reporting fraud.'' [554] We note that others may define ''financial misconduct'' and ''financial reporting fraud'' differently.[555]

Per the second through fourth rows of Table 13, the representation of low-revenue seasoned issuers among all seasoned issuers with any of these types of AAERs ranges from 24 to 42 percent. For comparison, we also derive the representation of low-revenue seasoned issuers among all seasoned issuers in the population. Per the first row of Table 13, across all of the years of our sample, and specifically among the seasoned issuers, 50 percent of the issuer-year observations are associated with low revenues.[556] Thus, we do not find evidence based on the available data that low-revenue issuers are more highly represented in the set of seasoned issuers associated with ''financial misconduct'' or ''financial reporting fraud'' than they are in the overall population of seasoned issuers.

A caveat to this finding is that it only reflects cases of discovered and charged alleged misconduct, and may not be representative of all cases of actual misconduct.[557] Also, this analysis is limited to the population of AAERs. There may be additional cases of alleged misconduct with respect to financial reporting that are charged but not associated with AAERs, and low-revenue issuers could be more highly represented among these cases.[558] Further, even if the affected issuers may not be more likely to engage in fraudulent financial reporting than other seasoned issuers on average, certain of these affected issuers may have heightened incentives to engage in such activities, as noted by the commenters cited above.

We next consider whether expanding the exemption from the ICFR auditor attestation requirement for such issuers would affect their likelihood of engaging in such activities. To address this question, we rely on a study that associates material weaknesses in ICFR with an increased rate of ''financial reporting fraud.'' [559] In particular, the study associates reporting ''entity-level'' material weaknesses in ICFR,[560] but not other types of material weaknesses, with a 1.22 percentage point increase in the rate of ''financial reporting fraud'' over the following three years, or 0.41 percentage points (1.22 divided by three) per year.

Given that any impact of the ICFR auditor attestation requirement on the risk of fraud is likely to result from the effect of this requirement on the effectiveness of ICFR, we apply the results of this study to our estimated effect on ICFR to quantify the potential increase in this risk that could be associated with the amendments. Per the results earlier in this section, we estimate that the amendments may eventually result in an additional 15 percentage points of the affected issuers maintaining ineffective ICFR. Examining the types of material weaknesses experienced by low-revenue issuers of different filer statuses, we find that up to 85 percent of their material weaknesses would be classified as ''entity-level'' material weaknesses as defined by the study we are relying on.[561] Applying the above annualized estimate of a 0.41 percentage point increase in the rate of financial reporting fraud for issuers reporting ''entity-level'' material weaknesses to our estimate of a 12.75 percentage point (15 percentage points times 85 percent) increase in the prevalence of such material weaknesses, we estimate that the amendments could eventually lead to an additional 0.05 percentage points (0.41 percent times 12.75 percentage points) of the affected issuers being associated with alleged ''financial reporting fraud'' with respect to their financial statements for a given year.

To better understand the magnitude of this potential effect, we rely on another study that estimates that issuers lose a total of 38 percent of their equity market value upon announcements of ''financial misrepresentation,'' or, given that the alleged violation periods in their sample span 27 months on average, 17 percent of equity market capitalization for each affected year.[562] The affected issuers that will be newly exempt from all ICFR auditor attestation requirements have an average equity market capitalization of about $205 million. We therefore estimate that the magnitude of the potential increase in fraud risk is 0.05 percentage points (our estimated annualized rate of the increase in issuer-years associated with

that users of the newer iterations of this dataset, after the date of the study, should face lower or zero rates of effective omissions.

[554] *See, e.g.,* Karpoff *et al.* 2017 Study, note 553 above, and COSO 2010 Fraud Study, note 505 above.

[555] *See, e.g.,* Karpoff *et al.* 2017 Study, note 553 above, (describing certain other measures researchers have used and their limitations), note 553 above.

[556] While the latter two rows of Table 13, regarding ''financial misconduct'' and ''financial reporting fraud,'' are based on relatively more recent data (AAERs issued from 2002 through 2018, reflecting alleged misconduct from 1985 to 2016), we note that considering the prevalence of low-revenue issuers in relatively more recent years does not change our conclusions. For example, the percentage of low-revenue issuers among the total issuer-year observations of seasoned issuers with revenue data is about 47 percent when considering data from 1985 through 2016 (reaching a minimum of 38 percent in 2016), which still exceeds the 25 to 30 percent of the seasoned issuers associated with ''financial misconduct'' or ''financial reporting fraud'' that have low revenues.

[557] We note that the required data, such as data on revenues, may be less likely to be available for low-revenue issuers to the extent that, like other small issuers, they are less likely to be covered by traditional databases. This could reduce our ability to detect a higher representation of these issuers among those with various types of AAERs. However, this should generally be accounted for in our analysis because we draw comparisons only within the population of issuers with available data, and the same limitation applies to our ability to estimate the representation of such issuers in the overall population as in the population with AAERs.

[558] For example, not all of the enforcement actions listed in the category of ''Issuer Reporting/Auditing & Accounting'' in the Annual Report of the Commission's Division of Enforcement are associated with AAERs. *See, e.g., 2019 Annual Report,* Division of Enforcement, available at *https://www.sec.gov/enforcement-annual-report-2019.pdf.*

[559] *See* Donelson *et al.* 2017 Study, note 470 above. This study identifies ''financial reporting fraud'' as either (1) the sample of ''fraud'' cases in the ''financial misrepresentation dataset'' from *www.fesreg.com* that underlies the Karpoff *et al.* 2017 Study, note 553 above, which, based on the latter study, represents the subset of Commission or Department of Justice enforcement actions that include charges under Sections 13(b)(2)(A), Section 13(b)(2)(B), or Section 13(b)(5) of the Securities Exchange Act, or Rules 13b2–1 or 13b2–2 under the Securities Exchange Act, that also include charges under the anti-fraud statutes in Section 17(a)(1) of the Securities Act or Section 10(b) of the Securities Exchange Act; or (2) settled securities class-action lawsuits that allege violations of GAAP.

[560] This study defines entity-level material weaknesses as those that Ives Group Audit Analytics identifies as being in any of the following categories: (1) Non-routine transaction control issues; (2) journal entry control issues; (3) foreign, related-party, affiliated, or subsidiary issues; (4) an ineffective, nonexistent, or understaffed audit committee; (5) senior management competency, tone, or reliability issues; (6) an insufficient or nonexistent internal audit function; (7) ethical or compliance issues with personnel; or (8) accounting personnel resources, competency, or training issues. *See* Donelson *et al.* 2017 Study, note 470 above.

[561] *See* note 560 above.

[562] *See* Jonathan Karpoff, D. Scott Lee, and Gerald Martin, *The Cost to Firms of Cooking the Books,* 48(3) J. of Fin. and Quantitative Analysis 581 (2008) (''Karpoff *et al.* 2008 Study''). The study defines ''financial misrepresentation'' consistently with the ''financial misrepresentation dataset'' from *www.fesreg.com* which, based on the Karpoff *et al.* 2017 Study, note 553 above, represents the subset of Commission or Department of Justice enforcement actions that include charges under Sections 13(b)(2)(A), Section 13(b)(2)(B), or Section 13(b)(5) of the Securities Exchange Act, or Rules 13b2–1 or 13b2–2 under the Securities Exchange Act. While the ''financial misrepresentation'' sample does not also require charges under the anti-fraud statutes, the Karpoff *et al.* 2008 Study indicates that over three-fourths of this sample was associated with fraud charges.

''financial reporting fraud'') times 17 percent times $205 million, or about $17,500 in market capitalization per year per affected issuer that will be newly exempt from the ICFR auditor attestation requirements. We view this estimate as conservative because the study we rely on includes issuers that are younger and significantly smaller than the affected issuers, and we believe that the percentage of market capitalization loss is likely to be greater for such firms.

Overall, this analysis does not cause us to change our primary conclusions regarding the potential effects of the amendments.

v. Timing of the Effects

We anticipate that the potential adverse effects of the amendments will develop gradually and are likely to be relatively limited in the short term. We discuss the reasons that we expect a gradual evolution in the remainder of this section. Nevertheless, we recognize that a delay in realizing some of the associated costs from the amendments would not necessarily mitigate their ultimate effects. The preceding discussion is based on the comparison of steady-state differences across issuers in different categories, and represents an analysis of the eventual effects of the amendments. Because the amendments will allow some current accelerated filers to transition to non-accelerated filer status, some issuers that have already been subject to an audit of ICFR for one or more years may no longer be required to obtain an ICFR auditor attestation. While other issuers will enter into the affected issuers category without having previously obtained an ICFR auditor attestation, and such issuers are likely to represent a larger fraction of the affected issuers over time, initially issuers with experience with ICFR auditor attestations are expected to represent a substantial fraction of the affected issuers.

Newly exempt issuers may have implemented control improvements that would persist regardless of a transition. For example, they may have made investments in systems, procedures, or training that are unlikely to be reversed. It is difficult to predict the degree of inertia in ICFR and financial reporting in order to gauge how quickly, if at all, issuers that cease audits of ICFR may evolve such that their ICFR and the reliability of their financial statements is more characteristic of exempt issuers.[563] The gradual nature of such an evolution, and the associated halo effect of the last disclosed ICFR auditor attestation, may limit the short-term costs of the amendments. In addition, issuers that believe control improvements are valuable for reporting and certifying results will be free to spend the resources saved on the attestations on such improvements.

Affected issuers with experience with audits of ICFR may also be more likely to continue to obtain an ICFR auditor attestation on a voluntary basis than other exempt issuers are to begin voluntary audits of ICFR. This may be due to such issuers having already incurred certain start-up costs or facing demand from their current investors to continue to provide ICFR auditor attestations. Some issuers in the groups that we use for comparison, which are not subject to an ICFR auditor attestation requirement, voluntarily obtain an ICFR auditor attestation. Thus, the comparisons made above at least partially account for the fact that some issuers may choose to obtain an ICFR auditor attestation even in the absence of a requirement. However, to the extent the rate of voluntary ICFR auditor attestations would be higher amongst the issuers that will be newly exempt from the ICFR auditor attestation requirement than other exempt issuers, the anticipated costs of the amendments in the near term may be further reduced.

c. Implications for Investor Decision-Making

While we anticipate that the frequency of ineffective ICFR and, to a lesser extent, restatements may increase among the affected issuers as a result of the amendments, the economic effects of these changes may be reduced by another factor that may apply to many of these issuers. In particular, the usefulness of more reliable financial statements is linked to the degree to which they factor into the decisions of investors,[564] for example, with respect to these investors' valuations of issuers.[565] The financial statements of many low-revenue issuers may have relatively lower relevance for market performance if, for example, relative to higher-revenue issuers, their valuation hinges more on their future prospects than on their current financial performance.

We explored this possibility empirically in the Proposing Release, which used the methodology applied in previous studies to calculate, for issuers above and below the $100 million revenue threshold, the extent to which the variation in market performance is related to the variation in financial measures. For issuers at or above $100 million in revenue, we found, consistent with the findings of previous studies of all issuers, that key financial variables (the book value of assets and liabilities, the book value of equity, earnings, and the change in earnings) explain about 60 to 70 percent of the variation in equity market capitalization and 7.5 percent of the variation in stock returns.[566] In contrast, for issuers with revenues of less than $100 million, we found that these financial variables explain about 30 percent of the variation in equity market capitalization and just over 4.5 percent of the variation in stock returns.

One commenter indicated that a low-revenue issuer could have a large market capitalization and thus ''greater investor exposure.'' [567] While we agree that such affected issuers would generally expose more investors to risk, we note that the results discussed above suggest that, on average, relative to higher-revenue issuers, less of this risk seems to be associated with the issuers' current financial statements than with their future prospects.[568] Another commenter agreed that future prospects are important to the valuation of entities in a growth phase, but noted that the financial variables we consider in our analysis are more likely to be considered in the valuation of low-revenue issuers that are more seasoned, and that we should therefore more fully consider the implications for these issuers in particular.[569] This commenter

[563] We note that there is a relatively small sample of accelerated filers transitioning to non-accelerated filer status because of changes in their public float, as compared to transitions in the other direction, and that such transitions likely represent special circumstances such as underperformance. Therefore, such transitions are not particularly helpful for predicting the outcomes of accelerated filers transitioning to non-accelerated filer status because of the amendments.

[564] *See, e.g.,* Dechow and Schrand 2004 Monograph, note 506 above.

[565] *See, e.g.,* Jennifer Francis & Katherine Schipper, *Have Financial Statements Lost Their Relevance?,* 37(2) J. of Acct. Res. 319 (1999) (''Francis and Schipper 1999 Study''); and S. P. Kothari, *Capital Markets Research in Accounting,* 31 J. of Acct. and Econ. 105 (2001).

[566] *See* Table 15 of the Proposing Release, note 4 above. *See also* Francis and Schipper 1999 Study note 565 above. While that study ends in 1994, before our 20 year horizon, the results are similar. For example, for the most recent ten years in that study, the book values of assets and liabilities explain 54 to 70 percent of the variation in equity market valuation, the book value of equity and earnings explain 63 to 78 percent of the variation in equity market valuation, and earnings and the change in earnings explain six to 20 percent of the variation in stock returns.

[567] *See* letter from Grant Thornton.

[568] Also, the affected parties are limited to issuers with no more than $700 million in public float. Further, as discussed in Section IV.C.3.d. below, we estimate that in aggregate the affected issuers that will be newly exempt from all ICFR auditor attestation requirements represent 0.2 percent of the total equity market capitalization of issuers.

[569] *See* letter from Crane.

also suggested that we might consider additional financial variables that may be more relevant to the valuation of low-revenue issuers, such as the rate of revenue growth and measures of liquidity. In response to this comment, we conducted supplemental analysis of the empirical relevance of financial statements for low-revenue issuers in Table 14.[570] Specifically, because the affected issuers that will newly be exempt from the ICFR auditor attestation requirement are generally not within five years of their IPO, we limit the analysis to more seasoned issuers. Further, we run the analysis with additional variables, as discussed below.

TABLE 14—PERCENTAGE OF VARIATION IN MARKET PERFORMANCE EXPLAINED BY VARIATION IN FINANCIAL PERFORMANCE FOR 1999 THROUGH 2018, BY REVENUE CATEGORY

Market variable	Explanatory variables	Revenue <$100M	Revenue ≥$100M
Seasoned issuers (not within five years of IPO):			
Market value of equity	Book value of assets, book value of liabilities	40.9	58.8
Market value of equity	Book value of equity, earnings	46.2	70.2
Stock return	Earnings, change in earnings	5.5	7.6
Seasoned issuers, additional variables:			
Market value of equity	Book value of equity, earnings, revenue, R&D expense, quick ratio.	55.8	81.5
Stock return	Earnings, change in earnings, revenue, change in revenue, R&D expense, change in R&D expense.	8.4	9.0

The first three rows of Table 14 are similar to the analysis in the Proposing Release, but are limited to issuers that are not within five years of their IPO. Focusing on this subsample of low-revenue issuers, which is more representative of the affected issuers that would be newly exempt from the ICFR auditor attestation requirement, we find that the financial variables considered in the Proposing Release explain about 40 to 45 percent of the variation in equity market capitalization and about 5.5 percent of the variation in stock returns. These percentages are slightly higher than our results for all low-revenue issuers in the Proposing Release (for which the variables explain about 30 percent and 4.5 percent of the variation in equity market capitalization and stock returns respectively, as noted above). However, they remain substantially lower than the results for higher-revenue seasoned issuers, for which the variables explain about 60 to 70 percent of the variation in equity market capitalization and about 7.5 percent of the variation in stock returns.

The second panel of Table 14 considers additional variables based on the comment letter discussed above and on academic accounting literature on key value-relevant metrics. For example, the role of the book value of equity in valuation may reflect, among other things, the liquidation or adaptation value of an issuer.[571] However, a commenter noted that, for issuers with little to no revenue, liquidity metrics are often relevant to a user's evaluation of future prospects.[572] We agree that there is evidence that, for certain issuers, liquidity metrics that relate current assets to current liabilities may provide key additional information on the likelihood of, and value upon, liquidation.[573] We therefore include the quick ratio (current assets less inventories, which may be difficult to monetize in the short term, minus current liabilities) in the analysis as a supplement to the book value of equity.

In considering further variables that would be appropriate to include in this analysis, we note that low-revenue issuers are significantly more likely to be loss-making than higher-revenue issuers.[574] The academic literature provides evidence that for loss firms, revenues (and the change in revenues, or revenue growth) can be more value-relevant than earnings (and the change in earnings).[575] A commenter also identified the rate of revenue growth as an example of a financial statement variable that investors may consider for low-revenue firms.[576] Separately, we note that research and development (''R&D'') costs are expensed and thereby reduce earnings, while there is evidence that the future benefits of R&D activity may not be reflected in the earnings of loss-making firms.[577] For these reasons, we include revenues and R&D expenses (and the change in these measures) as a supplement to earnings (and the change in earnings) in the analysis in the second panel of Table 14.

As demonstrated in the last two rows of Table 14, including these additional variables does increase the amount of variation in equity market capitalization and stock returns explained by the financial statement variables. However, the percentage of explained variation remains lower for low-revenue seasoned issuers than for higher-revenue seasoned issuers.

These results demonstrate that financial statement information is not irrelevant for low-revenue issuers. That is, information from financial statements is associated with market prices and returns for these issuers as well as other issuers. Thus, the potential reduction in the reliability of financial

[570] The reported statistics are adjusted R-squared statistics based on regression analysis by staff using data from the Standard & Poor's Compustat and Center for Research in Security Prices databases. Seasoned issuers are those for which the data date is not within five years of the reported IPO date, where IPO dates are available. Market value and financial variables are measured as of the end of the fiscal year. Earnings is income before extraordinary items. Stock return is the 15-month stock return ending three months after fiscal year-end, to account for reporting lags. For the stock return regression, the explanatory variables are scaled by the lagged market value of equity, and outliers in one percent tails of variable distributions are dropped to reduce noise. *See* Francis and Schipper 1999 Study, note 565 above, for additional details.

[571] *See, e.g.,* Philip Berger, Eli Ofek, and Itzahk Swary, *Investor Valuation of the Abandonment Option,* 42(2) J. of Fin. Econ. 259 (1996); David Burgstahler and Ilia Dichev, *Earnings, Adaptation and Equity Value,* 72(2) Acct. Rev. 187 (1997).

[572] *See* letter from Crowe.

[573] *See, e.g.,* Sergei Davydenko, *When Do Firms Default? A Study of the Default Boundary,* Working Paper (2012), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=672343* (finding that the quick ratio is highly correlated with the short-term probability of default, particularly for firms with less access to external capital).

[574] In this analysis, about half of the low-revenue issuers are loss-making, compared to about ten percent of the higher-revenue issuers.

[575] *See, e.g.,* Aswath Damodaran, *The Dark Side of Valuation: Firms with No Earnings, No History and No Comparables,* Working Paper (1999), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1297075.*

[576] *See* letter from Crowe.

[577] *See, e.g.,* Laurel Franzen and Suresh Radhakrisnan, *The Value Relevance of R&D across Profit and Loss Firms,* 28 (1) J. of Acct. and Pub. Pol'y 16 (2009).

statements for the affected issuers is expected to have some negative implications. However, the lower empirical relevance of financial statements on average for these issuers may partially mitigate the potential adverse effects of the amendments.

In contrast to these findings, a number of commenters cited analysis in Commissioner Jackson's Statement suggesting that, based on the stock market reaction to annual report filings disclosing material weaknesses in ICFR, investors care most about the information provided by the ICFR auditor attestation of low-revenue issuers.[578] Further, one of these commenters stated that the markets impose a ''much heftier penalty'' on small companies that restate than they do on larger companies.[579] On the other hand, other commenters expressed the view that the ICFR auditor attestation requirement is not important or material to the investors of affected issuers, based on their own experience and/or a study referencing an analysis of the market reaction to Section 302 internal control weakness disclosures.[580] As further evidence, two of these commenters asserted that investors rarely ask an issuer that is exempt from obtaining an ICFR auditor attestation to voluntarily comply with the requirement.[581] In response to these comments, we have conducted analyses of the investor response to ICFR disclosures and restatement announcements at low-revenue issuers versus other issuers.

First, we consider the market reaction to the filing of annual reports that contain ICFR auditor attestations reporting material weaknesses in ICFR. We only consider ICFR auditor attestation reports, as opposed to Section 404(a) management reports, in order to focus on a sample of issuers comparable to the affected issuers [582] and those reports that would no longer be required under the amendments. Because material weaknesses may persist across years, consecutive disclosures that continue to report material weaknesses are not likely to represent news to the market. We therefore focus on material weakness disclosures that are preceded by an ICFR auditor attestation reporting effective ICFR. We consider issuers with revenues of less than $100 million and higher-revenue issuers, but exclude those within five years of their IPO to more closely represent the affected issuers.[583] Figure 7 [584] presents the results of our event study analysis for disclosures in the last decade.[585]

[578] *See, e.g.,* letters from CFA, CFA Inst., and CII, citing the event study analysis in Commissioner Jackson's Statement.

[579] *See* letter from CFA.

[580] *See, e.g.,* letters from Adamas, Ardelyx, ASA, BIO, Carver, Catalyst, Chiasma, Corvus, CymaBay, Equillium, Evoke, Gritstone, Kezar, Marinus, Millendo, Organovo, Pieris, Revance, SI–BONE, Syros, Teligent, and Zynerba. Many of these letters cited the BIO Study, note 69 above, which in turn cites Jacqueline Hammersley, Linda Myers, and Catherina Shakespeare, *Market Reactions to the Disclosure of Internal Control Weaknesses and to the Characteristics of those Weaknesses under Section 302 of the Sarbanes Oxley Act of 2002,* 13(1) Rev. of Acct. Stud. 141 (2008) (''Hammersley *et al.* 2008 Study''). The BIO letter also directly cites the latter study. The BIO Study and BIO letter highlight the finding of the Hammersley *et al.* 2008 Study that the market response to issuers disclosing material weaknesses in disclosure controls in their Section 302 disclosures is, in the whole sample, not statistically different from zero. However, we note that this study does find evidence of a statistically significant negative market reaction to such disclosures in a subsample uncontaminated by other announcements in the event window.

[581] *See* letters from Ardelyx and BIO.

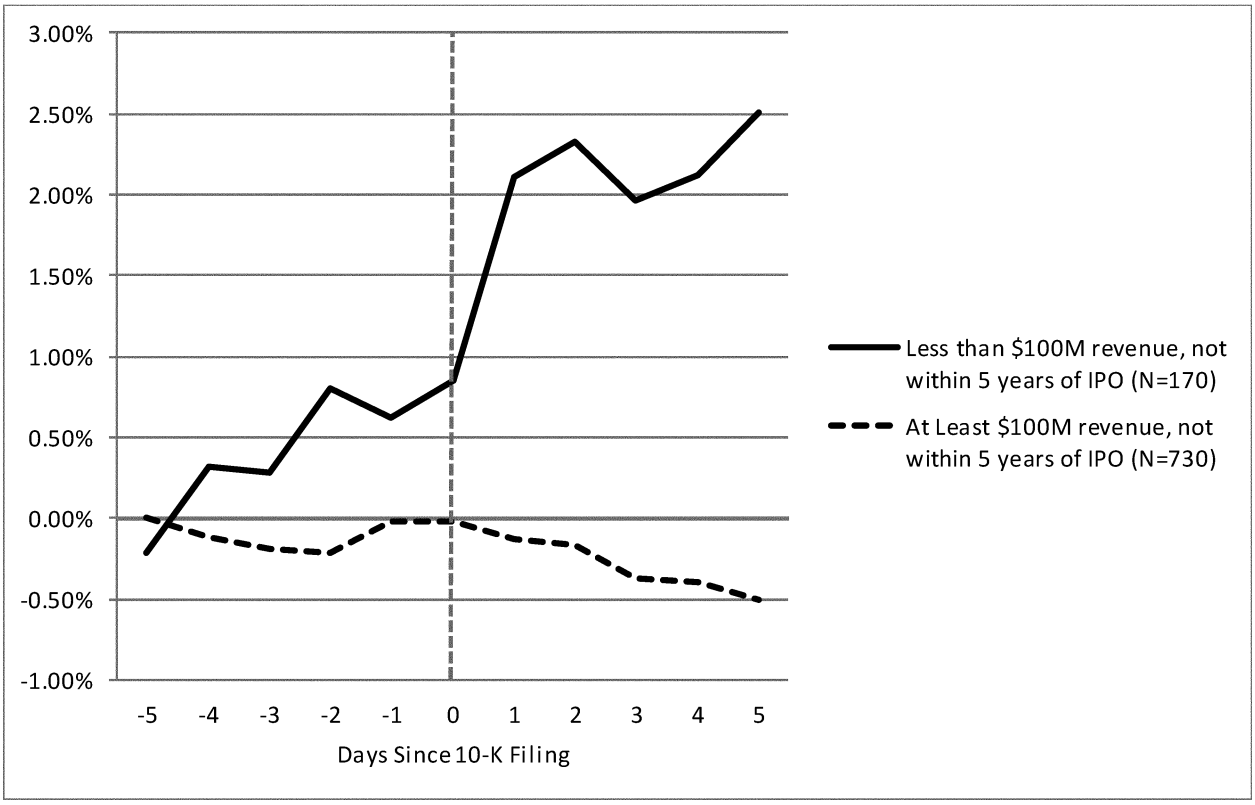
[582] In particular, Section 404(a) management reports are required of all issuers other than RICs and ABS issuers, including those that are already non-accelerated filers and would therefore not be affected by the amendments.

[583] We obtain substantially similar results if we consider all issuers, rather than excluding those within five years of their IPO, or if we include consecutive annual reports with material weakness disclosures, rather than focusing on new material weakness disclosures.

[584] This figure is based on results from the Event Study by WRDS module available through Wharton Research Data Services and staff analysis of data from Ives Group Audit Analytics, Compustat, and CRSP. The figure includes all seasoned issuers that have an auditor attestation of ICFR that newly reports material weaknesses in ICFR following a previous attestation to effective ICFR in annual reports filed in calendar years 2009 through 2018. We exclude issuers for which the data date is within five years of the IPO date (*i.e.,* non-seasoned issuers), if available. The cumulative average abnormal returns are calculated with respect to expected returns based on a multi-factor model including the three Fama French factors and a momentum factor, where the model parameters are calculated over an estimation period of up to 100 trading days ending 50 trading days before the event period.

[585] This time horizon was chosen to maximize the sample size while limiting the study to the period after the effectiveness of AS No. 5 (now referred to as AS 2201, note 292 above), which may have changed the nature of ICFR auditor attestations. *See* Section IV.B.1. above for a discussion of this auditing standard and the evidence that the nature of ICFR auditor attestations may have changed as a result of its adoption. Our results are substantially similar when considering alternative time horizons, such as the past five years.

Figure 7. Cumulative Average Abnormal Return around Annual Report Filings in which Auditor Newly Reports Ineffective ICFR, 2009-2018



Our analysis does not suggest that investors care more about the information produced by the ICFR auditor attestation requirement at low-revenue issuers. In particular, investors did not react more negatively to low-revenue issuers disclosing material weaknesses than to such disclosures by the higher-revenue issuers. None of the cumulative average abnormal returns plotted in the figure, whether for low- or higher-revenue issuers, are statistically differentiable from zero at conventional confidence levels.[586]

Our figure differs from the similar analysis that was cited by commenters for a number of reasons. First, that analysis includes a number of duplicate observations.[587] The duplication generally occurs when there is both an ICFR auditor attestation and a Section 404(a) management report reporting a material weakness in the same annual report. While the duplicate observations appear to have only a modest effect on the pattern of the measured cumulative abnormal returns, they likely have the effect of biasing downward the width of the confidence interval presented in the analysis. When we remove the duplicates, we find that, as in our own analysis, the cumulative average abnormal returns for low-revenue issuers are not statistically differentiable from zero at conventional confidence levels for any day within the 11-day event period surrounding the disclosure date.[588] Also, we note that even without this adjustment, the confidence intervals plotted in the other analysis indicate that, by the end of the presented event period, the cumulative average abnormal returns are no longer statistically differentiable from zero for issuers with below $100 million in revenues.[589]

Second, more than half of the non-duplicate low-revenue observations in the other analysis appear to reflect reports of material weaknesses in Section 404(a) management reports in the absence of an ICFR auditor attestation. As discussed above, our analysis excludes observations where there is only a Section 404(a) management report because we believe they have limited relevance when considering the affected issuers and the effects of the amendments. Third, the other analysis reflects a different time horizon (2004 through 2017) than our analysis (2009 through 2018). In our analysis, we restrict the time horizon to the period after the effectiveness of AS No. 5 because the nature of ICFR auditor attestations may have changed after this point. These additional differences in

[586] The analysis applies the standardized cross-sectional test, which is robust to cross-sectional dependence in abnormal returns (which often results when events cluster in time, as in the case of annual report filing dates) as well as any event-induced increase in the variance of returns, to measure the statistical significance of the abnormal returns. *See* Ekkehart Boehmer, Jim Musumeci, and Annette Poulsen, *Event-Study Methodology under Conditions of Event-Induced Variance,* 30(2) J. of Fin. Econ. 253 (1991) (''Boehmer *et al.* 1991'').

[587] About 30% of the low-revenue observations in the analysis are exact duplicates in terms of company identifiers, event date, revenue and returns. *See* ''Abnormal Returns Data,'' available at *https://www.sec.gov/news/public-statement/jackson-statement-proposed-amendments-accelerated-filer-definition.*

[588] The width of the confidence interval at the far right side of the figure (for day +5) in the analysis cited by commenters appears to be about 0.85 percentage points. We understand that the standard errors in that analysis are simple cross-sectional standard errors (which are robust to event-induced increases in the variance of returns but not to any cross-sectional dependence in abnormal returns). Removing the duplicates, we find that the width of the corresponding 95% confidence interval would be 2.02 percentage points using this approach, which is about 2.4 times wider than the reported confidence interval.

[589] In particular, the presented confidence bands for the cumulative abnormal returns include zero by day 11 of the analysis, which considers the 11-day period beginning five days prior and ending five days subsequent to the date of disclosure.

the underlying sample appear to drive the differences in the pattern of the cumulative average abnormal returns in the analysis cited by commenters relative to our own analysis.[590] However, even if we were to use the broader set of reports and/or the time horizon of the other analysis, we continue to find that the cumulative average abnormal returns are not statistically differentiable from zero at conventional confidence levels for any day within the 11-day event period surrounding the disclosure date.

There is substantial noise inherent to an analysis of the disclosure of material weaknesses in annual reports, both because these reports often contain or are accompanied by significant confounding information [591] and because material weaknesses are often disclosed in advance of the annual report.[592] We therefore also undertook analysis of the market and financial statement impact of material restatements disclosed in Item 4.02 Form 8–K filings, which are relatively less likely to be accompanied by unrelated news or to be disclosed in advance of the filing. We consider restatements over the 10-year horizon from 2009 through 2018 to obtain more reliable estimates while still focusing on a recent period that should be reasonably representative of the current environment.[593]

TABLE 15—ESTIMATED EFFECTS OF ITEM 4.02 8–K RESTATEMENTS ANNOUNCED BY SEASONED ISSUERS IN 2009–2018, BY REVENUE CATEGORY AT TIME OF THE MISSTATEMENT

	Issuers not within five years of IPO	
	Revenue <$100M	Revenue ≥$100M
Average 2-day announcement return (%)	−0.9%	−3.3%.
Announcement return statistically distinguishable from zero (95% confidence level)	No	Yes.
Average 2-day announcement return (95% confidence interval)	−2.2% to +0.3%	−4.2% to −2.3%.
Average 2-day announcement effect ($)	−$1.4M	−$22.0M.
Percent with adverse financial statement effect *	78%	80%.
Percent with income effect	83%	81%.
Among those with income effect, average net income effect ($) per year of restated financials	−$1.9M	−$13.2M.
Average length of restated period	1.4 years	2.0 years.

* This row, based on the ''Effect'' variable from Ives Group Audit Analytics, indicates whether the net effect to the financial statements (income statement, balance sheet or cash flows) was negative.

As with our previous analyses, this supplemental analysis also does not support the assertion that investors care more about the reliability of the information in the financial statements of low-revenue issuers than that of higher-revenue issuers. The market reaction to Item 4.02 Form 8–K filings is statistically indistinguishable from zero for low-revenue, seasoned issuers, but is negative and statistically significant for higher-revenue issuers. While the point estimates for the market impact of the restatements are uncertain, as demonstrated by the confidence intervals presented in the second row of Table 15, the corresponding point estimates for the dollar market impact per restatement announcement are also substantially lower (at $1.4 million versus $22.0 million) for low-revenue seasoned issuers as compared to higher-revenue seasoned issuers. The rate of Item 4.02 restatements with negative financial statement impact or with net income impact is similar for both categories of issuers, at about 80 percent. We also consider how the average dollar market impact of the restatements relates to the average dollar correction in annualized net income, in case investors react more strongly per dollar of the correction in annualized net income for low-revenue issuers. However, Table 15 does not provide evidence that the corresponding point estimate dollar market impact is proportionately greater relative to the average annualized effect on net income for low-revenue seasoned issuers than for high revenue seasoned issuers.[594]

Overall, we acknowledge that a lower reliability of their financial statements may have significant effects on the valuation of certain low-revenue issuers. It is possible, for example, as one commenter stated, that ''[for] many low-revenue companies that are struggling to become high revenue companies . . . their ability to attract capital may depend primarily on their ability to convince analysts and investors that their revenues are strong and steadily rising.'' [595] However, when we consider

[590] While, as discussed above, we also refine the analysis presented in Figure 7 to exclude consecutive disclosures that continue to report material weaknesses and to limit the analysis to seasoned issuers, we find that these choices have more modest effects on the pattern of cumulative average abnormal returns.

[591] Staff analysis of material weakness disclosures that were accompanied by large positive or negative stock returns found evidence of announcements of confounding news that are associated with large positive returns (*e.g.,* significantly beat earnings estimates, positive news about Phase III trial, liquidity infusion, merger announcement) and large negative returns (*e.g.,* significantly miss earnings estimates, liquidity problems and security issuance at significant discount). *See* also, *e.g.,* Paul Griffin, *Got Information? Investor Response to Form 10–K and Form 10–Q EDGAR Filings,* 8(4) Rev. of Acct. Stud. 433 (2003) (for more detail on the overall information content of annual reports) and Edward Li and K. Ramesh, *Market Reaction Surrounding the Filing of Periodic SEC Reports,* 84(4) Acct. Rev 1171 (2009) (for further analysis of the information content released in, and at the time of, annual report filing).

[592] Staff analysis of material weakness disclosures that were preceded by an ICFR auditor attestation reporting effective ICFR found that in about one-third of cases these new material weaknesses had been disclosed prior to the annual report, such as in an Item 4.02 Form 8–K or a Form 10–Q filing.

[593] The estimates in Table 15 are based on staff analysis of restatements associated with an Item 4.02 8–K dated within calendar years 2009 through 2018. The sample includes, for issuers that are not within five years of their IPO, 260 restatements by low-revenue issuers and 384 restatements for higher-revenue issuers with non-missing stock returns. The data on restatements, including their financial statement effects, are from Audit Analytics. Revenues are measured as of the beginning of the restated period. The data on revenues and IPO dates are from Compustat. The announcement returns are cumulative abnormal returns based on results from the Event Study by WRDS module available through Wharton Research Data Services. They represent the cumulative abnormal returns for the two-day event period including the date of the associated 8–K filing and the following trading day. These abnormal returns are estimated relative to a benchmark model of returns based on the three Fama-French factors and a momentum factor, where the model parameters are calculated over an estimation period of up to 100 trading days ending 50 trading days before the event date. The confidence intervals are based on the standardized cross-sectional test of Boehmer *et al.* 1991, note 586 above.

[594] In particular, the ratio of average dollar market impact of the restatements relative to the average dollar correction in annualized net income for low-revenue seasoned issuers is −$1.4M/−$1.9M or about 0.7, while the corresponding ratio for higher-revenue seasoned issuers is −$22.0/−$13.2 or about 1.7.

[595] *See* letter from CFA.

the evidence in aggregate across the population of low-revenue and higher-revenue seasoned issuers based on the three different types of analyses in this section, we find some evidence that financial statements and their reliability are less associated with market prices for low-revenue issuers and no evidence that there is a stronger association with market prices for low-revenue issuers than for higher-revenue issuers. Therefore, we continue to believe that the evidence supports the supposition that relative to higher-revenue issuers, the value of low-revenue issuers, on average, hinges more on their future prospects than on their current financial performance, and that this consideration should mitigate the potential adverse effects of the amendments.

d. Potential Economic Costs of Effects on ICFR, the Reliability of Financial Statements, and Potential Fraud

A number of commenters indicated that we should make further attempts to quantify the potential costs of the amendments.[596] A few commenters further asserted that the costs of the amendments will significantly outweigh any benefits.[597] In the previous section, we estimated that the affected issuers that will newly be exempt from all ICFR auditor attestation requirements may eventually experience a 15 percentage point increase in ineffective ICFR and, for a given year of financial statements, an estimated 2 percentage point increase in restatements, a 0.5 percentage point increase in Item 4.02 restatements, and a 0.05 percentage point increase in ''financial reporting fraud'' associated with those financial statements. In this section, we provide additional monetized estimates of the impact, in dollar terms, which may be associated with certain potential adverse effects. As noted earlier, this discussion and these estimates are focused on affected issuers that will be newly exempt from the ICFR auditor attestation requirement and are not expected to be subject to the FDIC auditor attestation requirement.

Overall, as discussed in more detail below, we are able to quantitatively estimate, per year per affected issuer, a total of approximately $60,000 in costs and an additional approximately $10,000 in transfers across shareholders, which represent costs to some shareholders and benefits to other shareholders.[598] These estimates reflect our quantification, based on the available evidence and data, of potential effects related to operating performance, restatements, and financial reporting fraud. We note that we are unable to adjust the dominant component of the estimates (the estimated effect on operating performance) for the mitigating factors associated with low-revenue issuers that we discuss throughout this release, so the total estimate of costs may be inflated.

Given that our estimate of the cost savings per year per affected issuer is $210,000, we do not find evidence to support the views of the commenters that indicated that the costs of the amendments would significantly outweigh the benefits. However, we note two main caveats associated with our estimates of the costs and transfer that may result from the amendments, and with the underlying components of these estimates, which are discussed in more detail below. First, these estimates are necessarily more uncertain than our monetized estimates of cost savings to issuers because they are based on a larger number of assumptions. Secondly, we caution against attempts to over-interpret the relation between our quantitative estimates of monetized benefits and monetized costs, because neither of these measures is complete. For example, we are not able to monetize the potential benefit of reduced management distraction from operating activities[599] or the potential market-level costs of reduced efficiency of investor allocation across investment opportunities or reduced investor confidence.[600] We therefore are not able to quantify the overall net benefit or cost of the amendments.

i. Computation of Monetized Estimates of Costs

We provide further quantification of potential adverse effects of the amendments in this section, while the next section provides a discussion of these costs as well as other economic costs that we are unable to quantify. We begin by considering costs that may represent deadweight losses, or net costs to society, followed by a consideration of transfers across shareholders. First, we estimate the potential deadweight losses associated with a potential increase in the risk of fraud. In Section IV.C.3.b.iv. above, we estimated the magnitude of the potential increase in fraud risk to be about $17,500 in market capitalization per year per affected issuer that will be newly exempt from the ICFR auditor attestation requirements. A study that breaks down the equity market impact of fraud into deadweight losses (such as legal costs and impaired reputation) versus the effects that reflect the market adjusting to a more accurate representation of issuers' financial situations estimates that the former constitute approximately 75 percent of the total equity market loss.[601] We therefore estimate the potential average incremental deadweight loss associated with fraud to be $17,500 times 75 percent or roughly $13,000 per year per affected issuer. We consider the remainder of the estimated equity market effect, which represents a transfer from some investors to other investors, separately below.

Commenters suggested that we should quantify effects on operating performance associated with ICFR misreporting,[602] which are less likely to be corrected by remediation because the underlying material weaknesses are likely undetected. As discussed in the Proposing Release, potential effects of the amendments on operating performance are difficult to measure because the existing studies may not be generalizable to the affected issuers and the methods used in previous studies are difficult to apply to a comparable sample of low-revenue issuers in recent years.[603] However, in response to these comments, we rely on the results of a recent study[604] to provide an estimate of the possible loss in profits per year associated with ICFR misreporting. While we expect that the anticipated effect on the affected issuers would be reduced relative to those in the study given the mitigating factors specific to low-revenue issuers discussed above, we are unable to estimate an appropriate adjustment to reflect these factors. The study estimates that the difference in return on assets for issuers misreporting that they have effective ICFR versus those that properly report that they have ineffective ICFR (and thereby perhaps also work towards remediating their ICFR) is 3.3 percentage points over three years, or 1.1 percentage point per year. We multiply this difference by our estimate of the potential increase in misreporting of effective ICFR from Section IV.C.3.b.ii. above, which (based on statistics from the same study) is 3.5 percentage points, and the estimated average total assets of the affected

[596] *See, e.g.,* letters from Better Markets, CFA Inst., CII, Prof. Barth *et al.,* and Prof. Ge *et al.*

[597] *See, e.g.,* letters from Better Markets and Prof. Barth *et al.*

[598] The costs we estimate represent actual forgone value, while the transfers simply represent corrections to reflect an issuer's true financial position.

[599] *See, e.g.,* letter from Sutro.

[600] *See, e.g.,* letter from CII.

[601] *See* Karpoff *et al.* 2008 Study, note 562 above.

[602] *See, e.g.,* letters from CII, Prof. Barth *et al.,* and Prof. Ge *et al.*

[603] *See* Section III.C.4.c. of the Proposing Release, note 4 above.

[604] *See* Ge *et al.* 2017 Study, note 393 above.

issuers that will be newly exempt from all ICFR auditor attestation requirements from Section IV.C.1 above, which is $125 million. This results in an estimated reduction in potential earnings of about $48,000 per year on average for an affected issuer. As noted above, this estimate may be inflated, as it does not reflect any of the mitigating factors specific to low-revenue issuers discussed above.

In total, we estimate potential issuer-level costs of $48,000 in reduced earnings plus $13,000 in losses related to the increased risk of fraud, or roughly $60,000 in costs per year on average per affected issuer, though we view this estimate as conservative because it does not fully account for the mitigating factors discussed above. Next, we note that some of the potential adverse effects quantified in Section IV.C.3.b. above may be associated with stock market values that fail, at a given time, to reflect issuers' actual financial position. This potential inflation and later correction of stock market values would result in transfers that benefit some shareholders and harm other shareholders. Further, the same shareholder may benefit in certain of his shareholdings and be harmed in other shareholdings. Also, at any given time, the stock price may be inflated for certain reasons but have corrected for other prior inflation, depending on the timing of the revelation of the underlying issues. For the purpose of quantification of these potential transfers, we assume that issues are revealed gradually and smoothly over time, such that there is an even effect across years.

The first source of mispricing we consider is misstatements that later translate into restatements. In Section IV.C.3.b.iii. above, we estimated that the magnitude of the potential increase in Item 4.02 restatements represented −$5,000 in stock market impact per year per affected issuer. Secondly, we estimated earlier in this section that the magnitude of the potential increase in fraud risk is about −$17,500 in market capitalization per year per affected issuer, of which 25 percent or about −$4,500 reflects the market adjusting to a more accurate representation of issuers' financial situations.[605] Summing these quantified effects, and rounding up, we estimate that there may be approximately $10,000 of pure transfers across shareholders per year per affected issuer representing these corrections in stock values to reflect issuers' actual financial positions.

As discussed above, these estimates are intended to be responsive to commenters who indicated that further quantitative analysis of the costs of the amendments would be appropriate. One commenter also provided alternative quantified estimates of the costs of expanding the exemption from the ICFR auditor attestation requirement, estimating a $1.7 million loss in future earnings and $2.2 million in forgone market value per issuer.[606] While we rely on evidence from the same underlying study that this commenter uses for some of our estimates, we do not rely on these specific estimates for two primary reasons. First, the underlying study indicates that these per issuer estimates apply not to all issuers but only to those issuers that are suspected of misreporting that their ICFR is effective when exempted from the ICFR attestation requirement, which the study estimates to be only 9.3 percent of the issuers.[607] Secondly, these estimates reflect aggregate effects over three years and we scale everything to annualized effects for better comparability.[608] We also note that the estimate described by the commenter as forgone market value is described in the underlying study as a delay in a market value decline that would otherwise happen currently, not as an increase in market capitalization that could be captured under the ICFR auditor attestation requirement.[609]

Another commenter[610] cited the same underlying study's[611] estimates of quantified costs and benefits associated with the ICFR auditor attestation. As discussed above, the study estimates, in aggregate and in present value terms, a total of $388 million in aggregate audit fee savings and a total of $719 million in lower earnings associated with exempting non-accelerated filers.[612] While the commenter did not suggest that we adopt those specific estimates, we note that we do not rely directly on those estimates, which apply to a different context. In particular, the estimates in that study are intended to quantify the costs and benefits associated with the exemption that applies to all existing non-accelerated filers, versus those associated with extending the exemption to the smaller number and different type of affected issuers discussed in this release. However, as discussed in more detail throughout the release, we do rely on some results and approaches from that study in constructing our own estimates.

ii. Discussion of Economic Costs

While the previous section provided computations of monetary estimates of certain potential adverse effects of the amendments, this section provides further discussion of those costs as well as other economic costs that we are unable to quantify. Per the discussion in Section IV.C.3.a. above, any impact of the amendments on the effectiveness of ICFR and the reliability of financial statements may have issuer-level implications as well as market-level implications. At the issuer level, the potential increase, on average, in the rate of ineffective ICFR and restatements may lead investors to charge a somewhat higher average cost of capital for the affected issuers. An issuer's cost of capital, or the expected return that investors demand to hold its securities, determines the price at which it can raise funds. Thus, any such increase may be associated with a reduction in

[605] We note that some portion of this correction may already be incorporated in our estimate with respect to restatements given that we do no separately consider restatements that are associated with specific charges or allegations versus other statements.

[606] *See* letter from Prof. Barth *et al.*

[607] *See* Ge *et al.* 2017 Study, note 393 above.

[608] *Id.*

[609] *Id.* In particular, this study estimates a stock market value correction that would be delayed until ICFR misreporters experience the negative consequences of ineffective ICFR (such as restatements or lower operating performance), rather than resulting immediately because of a disclosure of ineffective ICFR. The study estimates that a $2.2 million stock market value correction would be delayed across a period of three years per suspected misreporter, who are estimated to represent 9.3 percent of the issuers exempt from the ICFR auditor attestation requirement. Annualizing and generalizing the study's estimate across issuers' results in an estimated delayed stock market correction per year per affected issuer of about $70,000 ($2.2 million divided by three years times 9.3 percent). We note that this estimate is similar to the likely stock market impact of the quantified costs and transfers that we estimate may result from the adverse effects of removing the ICFR auditor attestation requirement for the affected issuers (such as restatements and lower operating performance). In particular, our estimate of about $10,000 in potential transfers per year per affected issuer represents a $10,000 potential stock market correction per year per affected issuer. Our estimate of quantified potential costs of about $60,000 per year per affected issuer would likely be reflected in a similarly-sized stock market reaction, for a further potential stock market correction of about $60,000 per year per affected issuer, and a total of about $70,000 ($10,000 plus $60,000) in stock market effects per year per affected issuer, the same as the estimate implied by the study. That said, we differ somewhat in the attribution of this total to deadweight costs versus transfers, as the Ge *et al.* 2017 study, note 393 above, suggests that the total estimated stock market effect may represent only a difference in timing of the effect and thus a transfer across shareholders.

[610] *See* letter from Prof. Ge *et al.*

[611] *See* Ge *et al.* 2017 Study, note 393 above.

[612] This study also estimates a delay over three years in the timing of a market value decline (that would otherwise have occurred at the beginning of this three year period) of $935 million associated with the exemption from the ICFR auditor attestation requirement. *See* Section IV.C.2.b.ii. above.

capital formation to the extent that it decreases the rate at which the affected issuers raise new capital towards new investments. Further, the affected issuers may also experience reduced operational efficiency because of the reduced reliability of financial information available to management for the purpose of making operating decisions. These potential effects are supported by a number of studies discussed above.[613] Finally, there may be legal and reputational costs associated with any increase in the risk of fraud, which would represent deadweight losses, or net costs to society.

Several commenters expressed the view that eliminating the ICFR auditor attestation requirement would increase the cost of capital for certain issuers because of the potential effects of this change on the reliability of the financial statements of the affected issuers.[614] The potential issuer-level effect on the cost of capital is difficult to confirm and to quantify for the affected issuers because the existing studies may not be generalizable to the affected issuers and to the current nature of ICFR auditor attestations (*i.e.,* after the 2007 change in the ICFR auditing standard, the 2010 change in risk assessment auditing standards, and recent PCAOB inspections focused on these aspects of audits). Further, some of these studies provide mixed evidence, as discussed in Section IV.C.3.a. above. Moreover, the methods used in previous studies are difficult to apply to a comparable sample of low-revenue issuers in more recent years because, for example, there would only be a small sample of such issuers that recently switched filing status and because methods of measuring the implied cost of capital are particularly problematic for such issuers.[615] Commenters did not provide us with estimates or data that could be used to estimate potential effects on the cost of capital.

The available evidence supports the qualitative, directional effects on cost of capital noted above. That is, some of the affected issuers could experience an increase in their cost of capital. However, the previous section demonstrated that the potential increase in material weaknesses in ICFR that we estimate could occur may translate into a more limited effect on the reliability of disclosures, as measured, for example, by the rate of restatements, for the affected issuers. Also, based on our analysis, the financial metrics of these issuers have lower explanatory power for investors' determination of their value than in the case of other issuers. These two factors may mitigate the potential adverse effects on the affected issuers' cost of capital.

In addition, some of the costs of extending the exemption from the ICFR auditor attestation requirement to additional issuers may be further mitigated by the fact that some issuers, even if exempted, may voluntarily choose to bear the costs of obtaining such an attestation.[616] Affected issuers that expect a lower cost of capital with an ICFR auditor attestation, such as those with effective ICFR,[617] and particularly those that will be raising new debt or equity capital,[618] are more likely to voluntarily obtain an ICFR auditor attestation. We note that low-revenue issuers have less access to internally-generated capital, as discussed above, so they may be more reliant on external financing for capital. Consistent with this argument, commenters suggested that issuers may voluntarily obtain an ICFR auditor attestation if it were demanded by investors,[619] not complying would have a negative impact on investment analysts' coverage,[620] or issuers deem it a good use of their capital resources.[621] Further, as discussed in Section IV.C.4.d. below, we note that the benefits and therefore likelihood of voluntarily obtaining ICFR auditor attestations may be increased by the new check-box disclosure on annual reports required by the amendments, in that investors should be more able to readily discern which issuers obtained an ICFR auditor attestation.[622] However, it is probably not the case that issuers would voluntarily obtain an ICFR auditor attestation in every case in which the total benefits of doing so would exceed the total costs.[623]

The available evidence also supports the qualitative, directional effects on operating performance noted above. That is, some of the affected issuers could experience lower operating performance due to reliance on less reliable financial statements in their decision-making. Like the potential effects on the cost of capital, the potential effect on issuer operating performance associated with reported ineffective ICFR is also difficult to estimate and is likely to be mitigated by the multiple factors discussed above. Further, the point estimates in one study demonstrate that issuers that remediate their reported material weaknesses in ICFR might be able to make up a substantial amount of the previous operating underperformance.[624]

We do, however, quantify potential effects on operating performance associated with ICFR misreporting, which are less likely to be corrected by remediation because the underlying material weaknesses are likely undetected. We also estimate potential deadweight losses (*e.g.,* legal and reputational costs) associated with a possible increase in the risk of fraud. In total, per Section IV.C.3.d.i. above, we estimate potential issuer-level costs of $48,000 in reduced earnings plus $13,000 in losses related to the increased risk of fraud, or roughly $60,000 in costs per year on average per affected issuer, though we view this estimate as conservative because it does not fully account for the mitigating factors specific to low-revenue issuers discussed above.

We note that issuers and other market participants may adapt to the proposed changes in various ways, which may serve to enhance or mitigate the anticipated issuer-level costs. However, these actions, and therefore their net effects, are difficult to predict. For

[613] *See* Section IV.C.3.a. above.

[614] *See, e.g.,* letters from BDO and CFA.

[615] *See* note 481 above.

[616] Studies have associated voluntary compliance with the ICFR auditor attestation requirement with decreased cost of capital and value enhancements. *See, e.g.,* Cory Cassell, Linda Myers, & Jian Zhou, *The Effect of Voluntary Internal Control Audits on the Cost of Capital,* Working Paper (2013) (Cassell *et al.* 2013 Study), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1734300;* Todd Kravet, Sarah McVay, & David Weber, *Costs and Benefits of Internal Control Audits: Evidence from M&A Transactions,* Rev. of Acct. Stud. (forthcoming 2018), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958318;* and Carnes *et al.* 2019 Study, note 397 above. We note that the latter two studies are not able to differentiate between the effects of the ICFR auditor attestation and of management's assessment of ICFR under SOX Section 404(a).

[617] *See* Brown *et al.* 2016 Study, note 396 above.

[618] *See* Cassell *et al.* 2013 Study, note 616 above.

[619] *See, e.g.,* letters from BIO and Guaranty.

[620] *See, e.g.,* letter from Guaranty.

[621] *Id.*

[622] *See* 2013 GAO Study, note 246 above.

[623] There is substantial literature describing the fact that in certain circumstances the incentives of managers are not perfectly aligned with those of shareholders. *See, e.g.,* Michael Jensen & William Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3(4) J. of Fin. Econ. 305 (1976). Also, as discussed in Section IV.C.3.a. above, the ICFR auditor attestation requirement can have important market-level benefits through network and spillover effects that issuers are unlikely to internalize. That is, issuers are likely to balance the issuer-level benefits against the issuer-level costs of voluntary compliance without considering these externalities.

[624] *See* Feng *et al.* 2015 Study, note 484 above, (with point estimates of a one percent reduction in ROA in years with material weaknesses in ICFR and a 2.6 percent increase in ROA upon remediation, though there is significant uncertainty around these rates).

example, it has been posited that issuers reacted to the requirements of SOX by reducing accruals-based earnings management and, in its stead, making suboptimal business decisions for the purpose of real earnings management.[625] It is therefore possible that newly exempt issuers could, to some extent, reduce real earnings management in favor of accruals-based management. Another possibility is that scrutiny from analysts may provide an alternative source of discipline for some of the affected issuers, although there is evidence that analysts may stop covering issuers whose financial statements are deemed to have become less reliable.[626]

While the preceding analysis considers the average effects across the affected issuers on the effectiveness of ICFR and the reliability of financial statements, the potential issuer-level costs of the proposed extension of the exemption from the ICFR auditor attestation requirement likely vary across different types of affected issuers. For example, the effects may vary based on issuers' proclivity to detect and disclose material weaknesses in ICFR in the absence of an ICFR auditor attestation requirement and whether the issuers' have characteristics that the market associates with having such material weaknesses. We discuss this variation in detail in the Proposing Release.[627]

We next consider effects at the market-level. Some of these effects are associated with the transfers across shareholders that we estimated in Section IV.C.3.d.i. above. In total, we estimated that there may be approximately $10,000 of pure transfers across shareholders per year per affected issuer representing corrections in stock values to reflect issuers' actual financial positions. These transfers and the associated mispricing may reduce the efficient allocation of capital at the market level. Further, to the extent that the reliability of financial statements is somewhat reduced on average at the issuer level for the affected issuers, the efficient allocation of capital at the market level may be negatively affected given a diminished ability to reliably evaluate different investment alternatives.[628]

The reduced reliability of financial statements could also negatively impact capital formation through a reduction in investor confidence. Several commenters noted that they expected the amendments to have a negative effect on investor confidence.[629] In contrast, one commenter asserted that there is no correlation between a smaller company's compliance with the ICFR auditor attestation requirement and stronger markets in general,[630] while two others noted that they did not expect effects on investor confidence with respect to affected issuers that are banks.[631]

Section IV.C.3.a. provides additional discussion of these market-level factors. While we are unable to directly quantify the market-level effects on the efficient allocation of capital and on investor confidence, we anticipate that these effects may be limited due to the size of the expected effect on the reliability of these issuers' disclosures and potential transfers across shareholders as well as the small percentage of the total value of traded securities that is represented by the affected issuers. In particular, we estimate that the affected issuers that will be newly exempt from all ICFR auditor attestation requirements represent 0.2 percent of the total equity market capitalization of issuers.[632]

4. Potential Benefits and Costs Related to Other Aspects of the Amendments

In this section we consider the potential effects of the amendments with regard to other implications of accelerated filer status, specifically with respect to the timing of filing deadlines, certain required disclosures, and the determination of filer status. We also consider below some incremental effects of the amendments to the thresholds for exiting accelerated and large accelerated filer status and the new check-box disclosure required on the cover page of annual reports on Form 10–K, 20–F, or 40–F.

a. Filing Deadlines

As discussed in Section IV.B.1. above, non-accelerated filers are permitted an additional 15 days and five days, respectively, beyond the deadlines that apply to accelerated filers, to file their annual and quarterly reports. Extending these later deadlines to the affected issuers may provide these issuers with additional flexibility in preparing their disclosures, while modestly decreasing the timeliness of the data for investors.

Table 6 in Section IV.B.3. demonstrates that while the filing deadlines are not a binding constraint for most accelerated filers, with 63 percent filing their annual reports over five days early in recent years, some accelerated filers are likely to benefit from the extended deadline. For example, filing Form NT automatically provides a grace period of an additional 15 days to file an annual report, and over the past four years, about four percent of accelerated filers filed their annual reports within this grace period rather than by the original deadline. A further five percent of accelerated filers filed their annual reports after these additional 15 days had passed.

Even affected issuers that would otherwise have filed by the accelerated filer deadline may avail themselves of the additional time provided under the amendments to balance other obligations or to prepare higher quality disclosures. The 2003 acceleration of filing deadlines for accelerated filers from 90 to 75 days was associated, at least initially, with a higher rate of restatements for the affected issuers.[633] This finding suggests that a later deadline may allow some issuers to provide more reliable financial disclosures. While these issuers could alternatively file Form NT to receive an automatic extension, studies have found that investors interpret such filings as a negative signal, resulting in a negative stock price reaction.[634] Issuers may thus

[625] *See* Daniel Cohen, Aiyesha Dey, & Thomas Lys, *Real and Accrual-Based Earnings Management in the Pre- and Post-Sarbanes Oxley Periods,* 83(3) Acct. Rev. 757 (2008) (finding that an increase in real earnings management partially offset the decrease in accruals-based earnings management that followed SOX). *See also* Coates and Srinivasan 2014 Study, note 369 above, at 646–647.

[626] *See* Sarah Clinton, Arianna Pinello, & Hollis Ashbaugh-Skaife, *The Implications of Ineffective Internal Control and SOX 404 Reporting for Financial Analysts,*'' 33(4) J. of Acct. and Pub. Pol'y 303 (2013) (finding that the disclosure of internal control weaknesses is followed by a decline in analyst coverage).

[627] *See* Section III.C.4.c. of the Proposing Release, note 4 above.

[628] The efficient allocation of capital may be further reduced to the extent that the potential cost of capital effects discussed above operate through a reduction in the liquidity of the market for these issuers' shares, which increases the costs to investors looking to adjust their investments or redeploy their capital. *See* Diamond and Verrecchia 1991 Study, note 477 above.

[629] *See, e.g.,* letters from Better Markets and CII.

[630] *See* letter from BIO.

[631] *See* letters from BSC and SCBA.

[632] This statistic is based on staff analysis of data from Compustat. The total population of issuers used to construct this estimate are those that have annual reports on Forms 10–K, 20–F, or 40–F in calendar year 2018 and data on market capitalization in Compustat. *See* above note 336 for detail on the identification of affected issuers.

[633] *See, e.g.,* Colleen Boland, Scott Bronson, & Chris Hogan, *Accelerated Filing Deadlines, Internal Controls, and Financial Statement Quality: The Case of Originating Misstatements,* 29(3) Acct. Horizons 551 (2015) (''Boland *et al.* 2015 Study''); and Lisa Bryant-Kutcher, Emma Yan Peng, & David Weber, *Regulating the Timing of Disclosure: Insights from the Acceleration of 10–K Filing Deadlines,* 32(6) J. of Acct. and Pub. Pol'y 475–(2013).

[634] *See* Joost Impink, Martien Lubberink, & Bart van Praag, *Did Accelerated Filing Requirements and SOX Section 404 Affect the Timeliness of 10–K Filings?,* 17(2) Rev. of Acct. Stud. 227 (2012) and Eli Bartov & Yaniv Konchitchki, *SEC Filings, Regulatory Deadlines, and Capital Market Consequences,* 31(4) Acct. Horizons 109 (2017).

prefer to meet the original deadline if possible.

On the other hand, allowing the affected issuers to file according to the later non-accelerated filer deadlines may reduce the timeliness and therefore usefulness of the disclosures to investors. Studies have found a reduction in the market reaction to disclosure when the reporting lag between the end of the period in question and the disclosure date is lengthy, as more of the information becomes available through other public channels.[635] Researchers have also questioned whether such lags increase information asymmetries, because some investors are more able to access or process information that could provide indirect insight into an issuer's financial status or performance through alternative channels.[636]

One study found that the 2003 acceleration of filing deadlines was associated with a decrease in the market reaction to the disclosure of annual reports for accelerated filers.[637] Based on this result and supplementary tests regarding the change in disclosure quality and change in timeliness after the acceleration of deadlines, the authors concluded that the negative effect of the shorter deadline on the quality of disclosure appeared to dominate the beneficial effect on the timeliness of the disclosure for these issuers.[638] While this finding might not be directly applicable 15 years later, and there is some evidence that some of these effects were temporary,[639] in the absence of other evidence we expect the net effect of the extended filing deadlines to be beneficial on average but modest overall. One commenter, citing the complexity of current accounting standards and the volume of disclosure requirements, agreed that the benefits of the extended deadlines for the affected issuers were likely to outweigh their costs.[640] Other commenters did not opine on the costs and benefits of the changes in filing deadlines for the affected issuers.

b. Disclosures Required of Accelerated Filers

Non-accelerated filers are not required to provide disclosure regarding the availability of their filings under Item 101(e)(4) of Regulation S–K. While some investors may benefit from reduced search costs due to such disclosures, we do not expect that extending the exemption from these disclosures to the affected issuers will have significant economic effects.

Non-accelerated filers also are not required to provide disclosure required by Item 1B of Form 10–K or Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports. Studies have found that the eventual disclosure of staff comments and related correspondence, as well as interim information about these comments before they are made public, are value-relevant (in that they affect the pricing of securities) for investors.[641] While our understanding is that Items 1B and 4A disclosures are relatively uncommon,[642] extending the exemption from the requirement to disclose unresolved staff comments to the affected issuers may, in some circumstances, prevent the timely disclosure of value-relevant information to public market investors. Moreover, because Item 1B of Form 10–K and Item 4A of Form 20–F requires unresolved staff comments to be disclosed if they were made not less than 180 days prior to the end of that fiscal year, issuers no longer subject to this disclosure requirement may have a reduced incentive to resolve comments in a timely manner, which could decrease the quality of reporting for the period over which comments continue to be unresolved. We did not receive any comments on these potential effects.

c. Transition Thresholds

The amendments include revisions to the transition thresholds that address when an accelerated filer or large accelerated filer can transition into a different filer status. The amendments will allow accelerated or large accelerated filers to become non-accelerated filers if they qualify under the SRC revenue test or meet a revised public float transition threshold. An issuer whose revenues previously exceeded the SRC initial revenue threshold of $100 million will not qualify under the SRC revenue test unless its revenues fall below $80 million. The $80 million transition threshold for the SRC revenue test is 80 percent of the initial threshold of $100 million in revenue. An issuer whose public float previously exceeded the $75 million initial threshold for accelerated filer status will become a non-accelerated filer if its public float falls below $60 million, or 80 percent of that initial threshold, as opposed to the current threshold of $50 million. Finally, the amendments also revise the public float transition threshold for exiting large accelerated filer status and becoming an accelerated filer from $500 million to $560 million in public float, or 80 percent of the $700 million entry threshold, to align with the transition threshold for entering SRC status after having exceeded $700 million in public float.

The filer type exit thresholds in Rule 12b–2 are set below the corresponding entry thresholds to provide some stability in issuer classification given normal variation in public float and revenues. The exact placement of these thresholds involves a tradeoff between the degree of volatility in classification versus the extent to which the categories persistently include issuers that are below the initial entry thresholds. The Proposing Release presented a quantitative analysis of this tradeoff using 20 years of data on the evolution of market capitalizations (as a proxy for public float) and revenues.[643] In particular, this analysis demonstrated that a higher exit threshold is associated with more volatility in classification. For example, exit thresholds set at 100 percent of the public float entry thresholds would have led eight to ten percent of new entrants into a filer status to immediately exit the following year and then re-enter once again the year after that. Issuers and investors may be confused as a result of such frequent fluctuations in filer type. They may also bear resulting costs, such as (for issuers) the cost of frequently revising their disclosure schedules and continually considering the impact of whether they are subject to the ICFR auditor attestation requirement from one year to the next and (for investors) any incremental cost of evaluating the

[635] *See, e.g.,* Dan Givoly & Dan Palmon, *Timeliness of Annual Earnings Announcements: Some Empirical Evidence,* 57(3) Acct. Rev. 486 (1982).

[636] *See, e.g.,* Nils Hakansson, *Interim Disclosure and Public Forecasts: An Economic Analysis and a Framework for Choice,* 52(2) Acct. Rev. 396 (1977) and Baruch Lev, *Toward a Theory of Equitable and Efficient Accounting Policy,* 63(1) Acct. Rev. 1 (1988). We note that Regulation FD generally prohibits public companies from disclosing nonpublic, material information to selected parties unless the information is distributed to the public first or simultaneously. *See* 17 CFR 243.100 to 17 CFR 243.103.

[637] *See* Jeffrey Doyle & Matthew Magilke, *Decision Usefulness and Accelerated Filing Deadlines,* 51(3) J. of Acct. Res. 549 (2013). We note that this study found the reverse to be true for large accelerated filers.

[638] *Id.*

[639] *See, e.g.,* Boland *et al.* 2015 Study, note 633 above.

[640] *See* letter from BDO.

[641] *See, e.g.,* Patricia Dechow, Alastair Lawrence, & James Ryans, *SEC Comment Letters and Insider Sales,* 91(2) Acct. Rev. 401 (2015) and Lauren Cunningham, Roy Schmardebeck, & Wei Wang, *SEC Comment Letters and Bank Lending,* Working Paper (2017), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2727860.*

[642] Based on staff analysis using the Intelligize database, approximately 20 issuers included Item 1B disclosures in Forms 10–K filed in 2017.

[643] *See* Table 16 of the Proposing Release, note 4 above.

reliability of financial disclosures for an issuer that is not consistently subject to the ICFR auditor attestation requirement.

On the other hand, the analysis in the Proposing Release also illustrated that a lower exit threshold is associated with a greater number of issuers remaining in a particular category despite falling below the entry threshold. For example, exit thresholds set at 60 percent of the public float entry thresholds would have prevented four to six percent of the new entrants into a filer status from exiting that status despite being below the entry threshold in the next two years. A low exit threshold can thus risk having a filer status effectively apply to a broader group of issuers than intended.

The analysis in the Proposing Release further demonstrated that the balance between limiting filer status volatility while enabling filer status mobility provided by an exit threshold of 80 percent is similar around a $250 million, $75 million, and $700 million market capitalization. In particular, while five to six percent of the new entrants into a filer status would be expected to transition out and back into the status in the following two years, one to two percent of those entrants would be expected to remain within the same filer status despite being below the entry threshold for the two following years. We therefore expect the increase in the public float thresholds to exit accelerated and large accelerated filer status to $60 and $560 million, or 80 percent of the entry threshold in each case, to lead to a similar tradeoff in these factors as the 80 percent public float threshold to re-enter SRC status.

One commenter noted that certain of the affected issuers may recognize revenues unevenly across periods due to certain collaborative arrangements.[644] When considering issuers that have empirically crossed a $100 million revenue entry threshold in the past, the analysis in the Proposing Release demonstrated that, on average, these issuers would not be subject to significant volatility in classification. Thus, while some issuers may be subject to such volatility,[645] this does not appear to be a widespread concern. In fact, the analysis in the Proposing Release demonstrated that revenue is on average more stable than market capitalization, so the 80 percent threshold in the revenue test for exiting accelerated and large accelerated filer status is expected to provide a lower degree of filer status fluctuations for a comparable degree of filer status mobility. Overall, we expect the amended transition thresholds to provide a tradeoff between filer status mobility and volatility that is consistent with the tradeoff provided by the recently revised SRC transition provisions.

d. Disclosure

The amendments add a check box to the cover pages of Forms 10–K, 20–F, and 40–F to indicate whether an ICFR auditor attestation is included in the filing. While filer status is reported prominently on the cover page of annual reports for most issuers, there is currently not similarly prominent disclosure of whether an ICFR auditor attestation is provided. Such disclosure has been recommended by the GAO,[646] as well as some commenters.[647]

Investors can already ascertain whether an ICFR auditor attestation is included by searching within an issuer's annual report, and including additional items on the annual report cover page could marginally decrease the salience of each item already reported there. However, several commenters noted that it is currently difficult for investors to easily determine whether an issuer's filing includes an ICFR auditor attestation.[648] The cover page check box disclosure requirement will make it easier for investors to identify issuers that undergo an ICFR auditor attestation with only minimal additional disclosure expense for registrants. This may, on the margin, increase the efficiency of investment decisions and the allocation of capital across the market. It may also enhance the value to issuers of pursuing an ICFR auditor attestation, even when one is not required, by making it more likely that investors recognize that an issuer has obtained an ICFR auditor attestation and therefore account for this factor in their investment decisions. While issuers that voluntarily obtain an ICFR auditor attestation would bear additional costs to do so, we expect they would voluntarily bear these costs only if they believe that the associated issuer-level benefits (*e.g.,* a reduced cost of capital) would more than offset those costs. Thus, to the extent that more prominent disclosure would enhance these benefits, it may be a positive factor in the decision of additional firms to voluntarily obtain an ICFR auditor attestation. Such voluntary action by some of the issuers for which the requirement will be eliminated could, as discussed above, mitigate some of the potential negative effects of the amendments, although it is difficult to predict the frequency with which voluntary compliance might occur.

5. Alternatives to the Amendments

Below we consider the relative costs and benefits of reasonable alternatives to the implementation choices in the amendments.

a. Exclude All SRCs From Accelerated Filer Category

We considered excluding all SRCs from the accelerated filer definition, consistent with the past alignment of the SRC and non-accelerated filer categories. This alternative would include SRCs that meet the revenue test, as under the adopted amendments, as well as those that have a public float of less than $250 million when initially determining SRC status. Several commenters supported this approach.[649]

This alternative would have several benefits, such as promoting regulatory simplicity and reducing any frictions or confusion caused by issuers having to make multiple determinations of their filer type. This alternative would also expand the benefits of the amendments to additional issuers. We estimate that 268 additional issuers[650] would be non-accelerated filers rather than accelerated filers under this alternative, of which 48 are EGCs and 220 would newly be exempt from the ICFR auditor attestation requirement under SOX Section 404(b) (although we estimate that six of these newly exempt filers would still be subject to the FDIC auditor attestation requirement). In the

[644] *See* letter from EY.

[645] Issuers that expect significant volatility in their classification could consider voluntarily obtaining an ICFR auditor attestation in years where one is not required, given that commenters suggested that there would be no significant cost savings from obtaining an ICFR auditor attestation every three years as opposed to annually. *See, e.g.,* letters from Crowe and KPMG.

[646] *See* 2013 GAO Study, note 246 above.

[647] *See, e.g.,* letters from CAQ, CFA Inst., CII, Grant Thornton, and KPMG.

[648] *See, e.g.,* letters from CAQ, CFA Inst., and Grant Thornton. *See also* 2013 GAO Study, note 246 above.

[649] *See, e.g.,* letters from ASA, Guaranty, NAM, and Nasdaq.

[650] This estimate is based on staff analysis of the number of accelerated filers in 2018 with public float of at least $60 million but less than $250 million and prior fiscal year revenues (or, in the case of BDCs, investment income) of at least $100 million and that are eligible to be SRCs (*i.e.,* excluding ABS issuers, RICs, BDCs, subsidiaries of non-SRCs, and FPIs filing on foreign forms or using IFRS) or are BDCs (though we estimate that there are no BDCs that meet these criteria). Revenue data is sourced from XBRL filings, Compustat, and Calcbench. *See* note 298 above for details on the identification of the population of accelerated filers. We note that the incremental number of affected issuers could be higher than this estimate because there are approximately 65 issuers for which filer status and/or public float data are not available (and revenue data is either unavailable or revenues are at least $100 million).

Proposing Release,[651] we performed an analysis of the audit fees of lower-float issuers of different types and estimated an average compliance cost savings of $415,000 per year for the additional issuers that would be affected under this alternative, with some of these issuers experiencing lesser or greater savings. This likely represents a significant cost savings for issuers with less than $250 million in public float and may thus have beneficial economic effects on competition and capital formation. As discussed above, smaller issuers generally bear proportionately higher compliance costs than larger issuers. Reducing these additional issuers' costs would reduce their overhead expenses and may enhance their ability to compete with larger issuers. To the extent that the cost savings for the additional affected issuers enable capital investments that would not otherwise be made, this alternative would also lead to additional benefits in capital formation.

However, we expect the costs of this alternative to be greater than for the amendments, primarily due to the broader application of the exemption from the ICFR auditor attestation requirement and the diminished impact of some of the mitigating factors discussed in Section IV.C.3. above on SRCs that meet the public float test rather than the revenue test. In particular, we estimated in the Proposing Release [652] that extending the exemption from the ICFR auditor attestation requirement to issuers that are eligible to be SRCs based on their public float may result in an average increase in the rate of ineffective ICFR of about 25 percentage points among these issuers, somewhat higher than our estimate for low-revenue issuers. The analysis in the Proposing Release [653] also demonstrated that low public float issuers restate their financial statements at rates comparable to higher public float issuers, unlike low-revenue issuers, whose restatement rates were three to nine percentage points lower than for higher-revenue issuers of the same filer status. We therefore believe that the proposition that low-revenue issuers may, on average, be less susceptible to certain kinds of misstatements may not apply to the same extent to issuers with low public float. We estimated in the Proposing Release that the increase in restatement rates for the additional affected issuers may be comparable to the two percentage points we estimated for low-revenue issuers, but that, in contrast to the results for low-revenue issuers, this would likely result in higher restatement rates for the additional affected issuers than for the higher public float issuers that would remain accelerated filers.

The Proposing Release also tested whether the potential adverse impact of such a change may be mitigated by a lower empirical relevance of financial statements for the market valuation of these issuers. However, we did not find evidence that the market relies on financial statements to a lesser extent for the valuation of issuers with public float less than $250 million (as compared to issuers with a larger public float), and so this further mitigating factor that applies to low-revenue issuers likely does not apply equally to lower public float issuers.

Finally, as in Section IV.C.3., we re-examined responses to the 2008–09 Survey. When asked about the net benefits of complying with SOX Section 404, 16 percent of respondents at accelerated filers with public float of less than $250 million claimed that the costs far outweighed the benefits, in contrast to, as reported above, 30 percent of respondents at accelerated filers with revenues of less than $100 million.[654] While this survey data is somewhat dated, it provides an indication as to the perception by executives at issuers at that time of the relative costs and benefits of the ICFR auditor attestation requirement. To the extent that this perception is borne out by the actual costs and benefits of the ICFR auditor attestation requirement for issuers that meet the SRC revenue test and for those that would otherwise be SRCs under the public float test, this data may suggest that low-revenue issuers would benefit more from qualifying as non-accelerated filers than would other types of SRCs.

We did not receive any comments on our analysis of the benefits and costs of extending non-accelerated filer status to all SRCs.

b. Include or Exclude Certain Issuer Types

Alternatively, we considered approaches that would include or exclude additional issuer types, or apply different requirements to particular issuer types. For example, we could extend non-accelerated filer status to other issuers with between $75 million and $700 million in public float that meet the SRC revenue test but would not be eligible to be SRCs because they are majority-owned subsidiaries of non-SRCs. However, in the Proposing Release, we estimated that only one majority-owned subsidiary of a non-SRC parent would meet the same public float and revenue thresholds as the affected issuers. Given the minimal number of such issuers and the responsibilities of the parent of any such issuers with respect to the ICFR of their subsidiaries, we expect the incremental costs and benefits of this alternative to be minimal.

As discussed above, in a change from the proposal, the final amendments also exclude BDCs from the accelerated and large accelerated filer definitions under circumstances that are analogous to the exclusions for other issuers under the amendments. We estimate that approximately 28 BDCs will therefore be affected by the amendments, of which seven are EGCs and therefore already exempt from the ICFR auditor attestation requirement.

We recognize, as stated in the Proposing Release, that investors in BDCs generally may place greater significance on the financial reporting of BDCs relative to low-revenue non-investment company issuers. However, given the small number of BDCs, it is difficult to assess to what extent our findings with respect to the anticipated costs and benefits of the amendments for the broader pool of affected issuers would apply similarly to BDCs as an isolated subset of these issuers.[655] We note, however, that one commenter urged that we pursue the adopted approach, stating that, among other reasons, ''[a]llowing smaller BDCs to benefit from non-accelerated filer status, and thereby ease regulatory costs and burdens, could encourage more BDCs to enter the public markets, creating greater access to capital for small operating companies and expanding investment opportunities for retail investors.''.[656] Given the limited

[651] *See* Section III.C.6.a. of the Proposing Release, note 4 above.

[652] *Id.*

[653] *Id.*

[654] These estimates are based on staff analysis of data from the 2008–09 Survey. The analysis considers responses pertaining to the most recent year for which a given respondent provided a response. We note that the rate of responses to the question about net benefits was lower than for other questions. *See* 2009 SEC Staff Study, note 304 above, and Alexander *et al.* 2013 Study, note 401 above, for details on the survey and analysis methodology.

[655] While more refined analysis is difficult, we note that, for the 54 to 75 BDCs for which a management report on ICFR is available in Audit Analytics for years 2014 through 2017, the rate of ineffective ICFR reported by management is 9.0 percent, the rate of restatements is 9.8 percent, and the rate of Item 4.02 restatements is 2.3 percent on average across these years, which are comparable to the corresponding rates for all accelerated filers other than EGCs under the baseline. *See* Section IV.B.4. above.

[656] *See* letter from Proskauer.

number of affected issuers that are BDCs, we preliminarily expect the aggregate incremental costs and benefits of this alternative relative to the adopted approach to be modest, as compared to the universe of Form 10–K filers, although they could be significant for any particular issuer and significant for traded BDCs as a class of Form 10–K filers as we estimate the total number of traded BDC filers to be 51 (of which seven have a market capitalization below $75 million and would be already considered non-accelerated filers).[657]

We also considered alternative thresholds for BDCs, given that BDCs do not report revenue on their financial statements. The amendments exclude a BDC from the accelerated and large accelerated filer definitions in Rule 12b–2 if the BDC: (1) Has a public float of $75 million or more, but less than $700 million; and (2) has investment income of less than $100 million. Table 16 below provides statistics from the Proposing Release on other income-related metrics for BDCs with between $70 million and $700 million in public float.[658]

TABLE 16—CHARACTERISTICS OF BDCS WITH MARKET CAPITALIZATION BETWEEN $75 AND $700 MILLION

[In millions]

	Market capitalization as of February 2019	Investment income for most recent fiscal year	Net realized and unrealized gains and losses for most recent fiscal year	Net increase in net assets resulting from operations for most recent fiscal year
High	$507.91	$108.28	$43.12	60.69
Low	89.69	1.62	(−123.33)	(−$114.28)
Average	255.30	49.37	(−11.15)	$7.70
Median	244.72	47.67	(−4.44)	$13.01

The commenter that supported expanding the proposed amendment to the definition of accelerated filer and large accelerated filer to exclude BDCs suggested that we exclude entities with total investment income of less than $80 million in the most recently completed fiscal year for which audited financial statements are available and either no public float or public float of less than $700 million. Of the 29 BDCs identified in the Proposing Release with a market capitalization between $75 million and $700 million, 28 had investment income of below $100 million and 26 had investment income of below $80 million. We therefore anticipate that the incremental costs and benefits of a threshold of $80 million in investment income as compared to the adopted threshold of $100 million in investment income would be limited.

We also considered whether to require or permit BDCs to provide an independent public accountant's report on internal controls, similar to the one required by RICs on Form N–CEN, since both RICs and BDCs prepare financial statements under Article 6 of Regulation S–X, in place of the auditor attestation required by SOX Section 404(b). We considered whether such a substitution should be permitted for all BDCs or only required for those BDCs that would no longer be required to provide a report under SOX Section 404(b). We do not have any data and did not receive any public comment, however, regarding the potential benefits and costs of using a Form N–CEN-type report on internal controls as compared to the auditor attestation required by SOX Section 404(b).

We also considered excluding all FPIs, which are included in the affected issuers to the extent that they meet the required thresholds and other qualifications, from the amendments. Researchers have found that the restatement rates of foreign issuers may be artificially depressed due to a lower likelihood of detection and disclosure of misstatements for these issuers.[659] It is therefore possible that encouraging more effective ICFR through an ICFR auditor attestation requirement may be particularly important for such issuers. On the other hand, because low-revenue FPIs may have similar characteristics to low-revenue domestic issuers, including them in the group of affected issuers may help to maintain an even playing field for competition amongst these issuers and avoid discouraging foreign companies from issuing securities in U.S. public markets. The amendments attempt to strike a balance between these considerations by allowing FPIs to avail themselves of the amendments only if they file on domestic forms and present their financial statements pursuant to U.S. GAAP, as well as meeting the required thresholds and other qualifications.[660] Because of limitations in the availability of data such as filing status or public float for many FPIs, we are unable to reliably measure the potential effects for this subset of issuers. Commenters did not provide data that would allow us to further analyze the potential effects for these issuers.

c. Alternative Threshold

We considered alternative levels at which a revenue threshold could be set. A $100 million dollar revenue threshold

[657] Nontraded BDCs also file on Form 10–K, but these issuers are already non-accelerated filers because they do not have public float.

[658] This analysis used market capitalization valuations as of February 2019 to determine the set of potentially affected BDCs under different alternatives. While this methodology is different than the approach used by Rule 12b–2, which uses the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates as of the last business day of the issuer's most recent second fiscal quarter, we do not believe that it would substantially change our analysis. This analysis did not remove BDCs who may qualify as non-accelerated filers based on their status as EGCs. After identifying the set of potentially affected BDCs, our staff manually reviewed the then-most recent Form 10–K filed on our EDGAR system for each BDC. The affected parties estimates in Section IV.C.1. above uses self-identified filer status to identify affected BDCs (as well as other affected issuers), rather than using market capitalization data for this purpose. In particular, current status as an accelerated filer implies that the issuer's Rule 12b–2 public float does not exceed $700 million. *See* above note 336. Also, the public float of the affected BDCs was manually collected for the purpose of related statistics in Section IV.C.1. *See* notes 356, 366, and 367 above.

[659] *See, e.g.,* Suraj Srinivasan, Aida Sijamic Wahid, & Gwen Yu, *Admitting Mistakes: Home Country Effect on the Reliability of Restatement Reporting,* 90(3) Acct. Rev. 1201 (2015).

[660] While we currently estimate that no FPIs would currently qualify based on these requirements, we note that there are FPIs that otherwise meet the required thresholds and other qualifications and that might choose to file on domestic forms using U.S. GAAP in order to benefit from the amendments as well as the scaled disclosure accommodations available to SRCs if these benefits outweigh the costs of changing their disclosure regime.

was recommended, in conjunction with a public float threshold, for the accelerated filer definition as well as the SRC definition by the 2017 Small Business Forum and a participant at the September 2017 meeting of the former Advisory Committee on Small and Emerging Companies (''ACSEC'').[661] The $100 million threshold is also aligned with the SRC revenue test. Empirically, we find no obvious break in the distribution of revenue or in the results of our analysis. In general, lowering the revenue threshold would reduce the expected benefits of the amendments by reducing the number of issuers that would experience cost savings, while also reducing the expected costs of the amendments by reducing the potential adverse impact on the reliability of financial statements. Increasing the threshold would increase the expected benefits while also increasing the expected costs. We did not receive comments on the costs or benefits of alternative levels of a revenue threshold or of alternative metrics that should be used instead of revenue (except in the case of BDCs, as discussed above).

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and forms that would be affected by the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (''PRA''). The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[662] While several commenters provided comments on the possible costs of the proposed amendments,[663] no commenters specifically addressed our PRA analysis. Where appropriate, we have revised our burden estimates after considering these comments as well as differences between the proposed and final rules.

The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- ''Form 10–K'' (OMB Control No. 3235–0063);[664] and
- ''Form 10–Q''[665] (OMB Control No. 3235–0070).[666]

The regulation and forms listed above were adopted under the Exchange Act. The regulation and forms set forth the disclosure requirements for periodic reports filed by registrants to help investors make informed investment decisions. A description of the final amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the final amendments can be found in Section IV above.

B. Burden and Cost Estimates Related to the Final Amendments

We estimate that the final amendments will result in approximately 527 additional issuers being classified as non-accelerated filers.[667] Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports.[668] Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports.[669]

1. ICFR Auditor Attestation Requirement

We believe that expanding the exemption from the ICFR auditor attestation requirement would reduce the PRA burden for 373 of the 527 affected issuers.[670] An ICFR auditor attestation is required only in annual reports. Table 17, below, shows the estimated number of affected issuers that are subject to the ICFR auditor attestation requirement that file on each of these forms and the average estimated audit-fee and non-audit costs, as described above,[671] to comply with the ICFR auditor attestation requirement.

[661] *See* Final Report of the 2017 SEC Government Business Forum on Small Business Capital Formation (Mar. 2018), available at *https://www.sec.gov/files/gbfor36.pdf;* and William J. Newell, Presentation at the ACSEC Meeting, *Sarbanes-Oxley Section 404(b): Costs of Compliance and Proposed Reforms,* (Sept. 13, 2017), available at *https://www.sec.gov/info/smallbus/acsec/william-newell-acsec091317.pdf.*

[662] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[663] *See, e.g.,* letters from Ardelyx Presentation, Cerecor, CFA, CFA Inst., CII, Concert, Corvus, Guaranty, ICBA, Nasdaq, Pieris, Prof. Barth *et al.,* Prof. Ge *et al.,* Summit, Syros, and Terra Tech.

[664] The paperwork burden from 17 CFR 240.12b–1 through 240.12b–37 (''Regulation 12B'') is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analyses of those forms. Our estimate for Forms 10–K takes into account the burden that will be incurred by including the disclosure in the applicable annual report. After the Proposing Release, note 4 above, was issued, the Office of Management and Budget (''OMB'') discontinued the OMB control number for Regulation 12B, so that the PRA inventory would not reflect duplicative burdens.

[665] 17 CFR 249.308a.

[666] The only revision to this form will be changing filing deadlines, which will neither increase nor decrease the burden hours necessary to prepare the filing because there will be no change to the amount of information required in the filing.

[667] *See* Section IV.C.1. above. We estimate that there are no FPIs that file on domestic forms and present their financial statements pursuant to U.S. GAAP that would meet the required thresholds and other qualifications of the amendments. However, there are an estimated 31 FPIs that file on forms only available to FPIs, but otherwise meet the required thresholds and other qualifications. In the Proposing Release, note 4 above, we included FPIs that file the forms available only to FPIs, but otherwise meet the required thresholds and other qualifications, in the number of affected issuers. While these issuers could become subject to the amendments by changing their reporting regime, it is difficult to predict how many would do so, as a result, we do not include them in the number of affected issuers in this release. Accordingly, we do not estimate any effect on the collections of information corresponding to Forms 20–F or 40–F.

[668] *See* Section II.A. above.

[669] *See* note 25 above.

[670] We estimate that the remaining 154 of the 527 affected issuers are EGCs, which are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b). *See* Section IV.C.1. above. In addition to the 154 EGCs, we estimate that a further 78 of the 527 affected issuers are currently also subject to the FDIC's auditor attestation requirement. *See* Section 18A of Appendix A to FDIC Rule 363. These issuers would continue to incur burden hours and costs associated with an auditor attestation requirement even under the final amendments. However, the FDIC's auditor attestation requirement is not part of our rules. For purposes of considering the PRA effects of the final amendments, therefore, we have reduced the burden hours and costs for these 78 issuers as we would for the other affected issuers that are not EGCs.

[671] *See* Sections IV.C.3. and IV.C.5. above.

TABLE 17—ESTIMATED ANNUAL COSTS PER ISSUER OF ICFR AUDITOR ATTESTATION REQUIREMENT FOR SPECIFIED FORMS

Form type	Number of affected issuers	Audit-fee costs per issuer	Non-audit costs per issuer
Form 10–K	373	$110,000	$100,000

Because these issuers would no longer be subject to the ICFR auditor attestation requirement under the final amendments, they would no longer incur these costs. For purposes of the PRA, this reduction in total burden is to be allocated between a reduction in internal burden hours and a reduction in outside professional costs. Table 18, below, sets forth the percentage estimates we typically use for the burden allocation for each form.

TABLE 18—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS

Form type	Internal (%)	Outside professionals (%)
Form 10–K	75	25

For the $100,000 reduction in annual non-audit costs,[672] we allocate the burden based on the percentages in Table 18 above. However, we believe that 100 percent of the $110,000 annual burden reduction for audit-fee costs related to the ICFR auditor attestation requirement should be ascribed to outside professional costs because that amount is an estimate of fees paid to the independent auditor conducting the ICFR attestation audit. Table 19, below, shows the resulting estimated reduction in cost per issuer associated with outside professionals.

TABLE 19—ESTIMATED REDUCTION IN OUTSIDE PROFESSIONAL COSTS FROM ELIMINATION OF ICFR AUDITOR ATTESTATION REQUIREMENT

Issuer type (form used)	Outside professional costs per issuer (non-audit)	Outside professional costs per issuer (audit fees)	Total outside professional costs per issuer (non-audit + audit fees)	Number of affected issuers	Total reduction in outside professional costs
[A]	[B]	[C]	[D]	[E]	(D × E) [F]
Form 10–K	$25,000	$110,000	$135,000	373	$50,355,000

For PRA purposes, an issuer's internal burden is estimated in internal burden hours. We are, therefore, converting the internal portions of the non-audit costs to burden hours. These activities would mostly be performed by a number of different employees with different levels of knowledge, expertise, and responsibility. We believe these internal labor costs will be less than the $400 per hour figure we typically use for outside professionals retained by the issuer. Therefore, we use an average rate of $200 per hour to estimate an issuer's internal non-audit labor costs. Table 20, below, shows the resulting estimated reduction in internal burden hours from the elimination of the ICFR auditor attestation requirement.

TABLE 20—ESTIMATED REDUCTION IN INTERNAL BURDEN HOURS FROM ELIMINATION OF ICFR AUDITOR ATTESTATION REQUIREMENT

Issuer type (form used)	Internal cost per issuer (non-audit)	Burden hours per issuer	Number of affected issuers	Total reduction in internal burden hours
[A]	[B]	(B/$200) [C]	[D]	(C × D) [E]
Form 10–K	$75,000	375	373	139,875

2. Filing Deadlines, Disclosure Regarding Filing Availability, and Unresolved Staff Comments

As the Commission has recognized previously, changing filing deadlines neither increases nor decreases the burden hours necessary to prepare the filing because there is no change to the amount of information required in the

[672] As discussed in Section IV.C.3, above, in deriving this estimate of the reduction in non-audit costs, we have looked to outside vendor and internal labor costs, and not to non-labor costs, because we believe that those non-labor costs (such as software, hardware, and travel costs) are primarily attributable to management's ICFR responsibilities under SOX Section 404(a) and thus would continue to be incurred. To the extent elimination of the auditor attestation requirement also results in a reduction in management's time burden, we believe this reduction generally would be captured by the estimated $100,000 reduction, as this amount reflects an overall reduction in non-audit costs.

filing.[673] Therefore, we do not believe that the change to the filing deadlines will affect an issuer's burden hours or costs for PRA purposes.

We believe that eliminating the requirements to provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports will reduce their burden hours and costs, but we do not expect that reduction to be significant. For purposes of the PRA, we estimate the reduction to be approximately one hour for each affected issuer.[674] However, as opposed to the burden reduction resulting from the elimination of the ICFR auditor attestation requirement, which would apply only to 373 of the 527 total affected issuers that are not EGCs, the burden reduction from eliminating these disclosure requirements will apply to all the 527 affected issuers, including the 154 affected issuers that are EGCs. That reduction is allocated by form as shown in Table 21, below.

TABLE 21—ESTIMATED REDUCTION IN INTERNAL BURDEN HOURS PER ISSUER FROM ELIMINATION OF DISCLOSURE REQUIREMENTS REGARDING FILING AVAILABILITY AND UNRESOLVED STAFF COMMENTS

Form type	Burden hours per issuer	Number of affected issuers	Reduction in internal burden hours
[A]	[B]	[C]	(B × C) [D]
Form 10–K	1	527	527

3. Check Box Disclosure

In a change from the proposed amendments, the final amendments add a check box to the cover pages of their annual reports on Forms 10–K, 20–F, and 40–F for issuers to indicate that they included an ICFR auditor attestation in the filing. In addition, if the issuer is otherwise required to tag cover page disclosure data using Inline XBRL, it must also to tag the cover page check box disclosure using Inline XBRL. Issuers must already determine whether they are subject to the ICFR auditor attestation requirement, so requiring issuers to add a check box to the cover pages of their annual reports on Forms 10–K, 20–F, and 40–F, and check that box if they provide the ICFR auditor attestation, will not substantively modify existing collection of information requirements or otherwise affect the overall burden estimates associated with these forms. Therefore, we are not adjusting any burden or cost estimates in connection with the check box requirement in the final amendments

4. Total Burden Reduction

Table 22, below, shows the total estimated reduction in internal burden hours and outside professional costs for all aspects of the final amendments.

TABLE 22—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

	Current burden			Burden change					
	Current annual responses	Current burden hours	Current cost burden	Change in company hours from auditor attestation	Change in company hours from disclosure requirement Elimination	Total change in company hours	Change in professional costs	Burden hours for affected responses	Cost burden for affected responses
	(A)	(B)	(C)	(D)	(E)	(F) = (D) + (E)	(G)	(H) = (B) + (F)	(I) = (C) + (G)
10–K	8,137	14,198,780	$1,895,224,719	(139,875)	(527)	(140,402)	($50,355,000)	14,058,378	$1,844,869,719

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'')[675] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[676] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 604 of the RFA.[677] This FRFA relates to the amendments to the accelerated filer and large accelerated filer definitions in Rule 12b–2 under the Exchange Act and the addition of a check box to the cover pages of Forms 10–K, 20–F, and 40–F to indicate whether an ICFR auditor attestation is included in the filing. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Amendments

The purpose of the amendments to the accelerated filer and large accelerated filer definitions in Rule 12b–2 is to promote capital formation by more appropriately tailoring the types of issuers that are included in the category of accelerated filers and revising the transition thresholds for accelerated and large accelerated filers. The addition of the check box to the cover pages of Forms 10–K, 20–F, and 40–F is intended to provide more prominent and easily accessible disclosure of this information for investors and market participants while imposing only minimal burdens on issuers. The need for, and objectives of, the amendments are discussed in more detail in Sections I and II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on all aspects of the

[673] *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports,* Release No. 33–8644 (Dec. 21, 2005) [70 FR 76634 (Dec. 27, 2005)].

[674] We believe that this one-hour reduction will be solely for an issuer's internal burden hours.

[675] 5 U.S.C. 601 *et seq.*

[676] 5 U.S.C. 553.

[677] 5 U.S.C. 604.

IRFA, including the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. We did not receive any comments specifically addressing the IRFA. However, we received a number of comments on the proposed amendments, generally,[678] and have considered all of these comments in developing the FRFA because the final amendments are focused on smaller issuers.

We believe that the final amendments will reduce disclosure burdens by expanding the number of registrants that will no longer qualify as accelerated or large accelerated filers, which will eliminate the ICFR auditor attestation requirement for those issuers, while maintaining investor protections.

C. Small Entities Subject to the Amendments

The final amendments will affect some registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [679] For purposes of the RFA, under our rules, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[680]

We estimate that there are 1,171 issuers that file with the Commission, other than investment companies, which may be considered small entities and are potentially subject to the final amendments.[681] Investment companies, which include BDCs, qualify as small entities if, together with other investment companies in the same group of related investment companies, they have net assets of $50 million or less as of the end of their most recent fiscal year.[682] Commission staff estimates that, as of June 2019, approximately 16 BDCs are small entities.[683] We believe it is likely that virtually all issuers that would be considered small businesses or small organizations, as defined in our rules, are already non-accelerated filers and would continue to be encompassed within that category. To the extent any such issuers are not already non-accelerated filers, we believe it is likely that the final amendments will capture those entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the final amendments will reduce the number of accelerated and large accelerated filers, which will reduce the compliance burden for those issuers, some of which may be small entities, because they would no longer have to satisfy the ICFR auditor attestation requirement, comply with accelerated deadlines for filing their Exchange Act periodic reports, provide disclosure regarding the availability of their filings, or provide disclosure required by Item 1B of Form 10–K and Item 4A of Form 20–F about unresolved staff comments on their periodic and/or current reports.[684] The ICFR auditor attestation requirement applies only to accelerated and large accelerated filers, and most small entities would not qualify for either filer status. Compliance with certain rules affected by the amendments require the use of professional skills, including accounting and legal skills. The final amendments are discussed in detail in Sections I and II above. We discuss the economic effect including the estimated costs and burdens, of the final amendments on all registrants, including small entities, in Section IV above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the amendments;
- Using performance rather than design standards; and
- Exempting small entities from coverage of all or part of the amendments.

We do not believe that establishing different compliance or reporting obligations in conjunction with the final amendments is necessary. The final amendments would not impose any significant new compliance obligations. In fact, the final amendments would reduce the compliance obligations of affected issuers by increasing the number of issuers, including small entities, that are subject to the different, less burdensome, compliance and reporting obligations for non-accelerated filers. Similarly, because the final amendments would reduce the burdens for these issuers, we do not believe it is appropriate to exempt small entities from all or part of the proposed amendments.

We believe that some of the issuers that would become eligible to be non-accelerated filers under the final amendments may be smaller entities. Therefore, to the extent that any small entities would become newly eligible for non-accelerated filer status under the final amendments, their compliance and reporting requirements would be further simplified. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for small entities, and the final amendments would not alter these existing accommodations.

The check box requirement should not affect small entities unless they voluntarily choose to comply with the ICFR auditor attestation requirements. Further, we note that the compliance burden associated with the check box is expected to be minimal, and establishing a different compliance requirement, providing additional clarification of the requirement, or exempting a small entity would not, therefore, have a meaningful impact on the small entity.

Finally, with respect to the use of performance rather than design standards, because the final amendments are not expected to have any significant adverse effect on small entities (and may, in fact, relieve burdens for some such entities), we do not believe it is necessary to use performance standards in connection with this rulemaking.

Statutory Authority and Text of Rule Amendments

The rule amendments described in this release are being adopted pursuant to Sections 7, 10, 19(a), and 28 of the Securities Act, as amended, and Sections 3(b), 12, 13, 15(d), and 23(a) of the Exchange Act, as amended.

[678] *See* Section II.B.2. above.

[679] 5 U.S.C. 601(6).

[680] *See* 17 CFR 240.0–10(a) under the Exchange Act.

[681] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of Form 10–K, 20–F and 40–F, or amendments, filed during the calendar year of January 1, 2018 to December 31, 2018. This analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[682] 17 CFR 270.0–10(a).

[683] These estimates are based on staff analysis of Morningstar data and data submitted by investment company registrants in forms filed on EDGAR as of June 2019.

[684] The amendments to include a check box on Forms 10–K, 20–F, and 40–F are not expected to affect the overall burden estimates associated with these forms. *See* Section V.C.3. above.

List of Subjects in 17 CFR Part 229, 230, 240, and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78*o,* 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 11–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

* * * * *

■ 2. Amend § 229.10 by adding Instruction 2 to paragraph (f) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(f) * * *

Instruction 2 to paragraph (f): A foreign private issuer is not eligible to use the requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, and 77s).

* * * * *

■ 4. Amend § 230.405 by adding Instruction 2 to the definition of ''smaller reporting company'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Smaller reporting company. * * *

Instruction 2 to definition of ''smaller reporting company'': A foreign private issuer is not eligible to use the requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, secs. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Sections 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l,* 78m, and 78*o*.6.

* * * * *

■ 6. Amend § 240.12b–2 by:
■ a. In the definition of ''Accelerated filer and large accelerated filer'':
■ i. Removing ''.'' at the end of paragraph (1)(iii) and adding in its place ''; and'';
■ ii. Adding paragraph (1)(iv);
■ iii. Removing ''.'' at the end of paragraph (2)(iii) and adding in its place ''; and'';
■ iv. Adding paragraph (2)(iv);
■ v. Revising paragraphs (3)(ii) and (3)(iii);
■ vi. Adding paragraph (4); and
■ b. Adding Instruction 2 to the definition of ''smaller reporting company''.

The addition and revisions read as follows:

§ 240.12b–2 Definitions.

* * * * *

Accelerated filer and large accelerated filer—(1) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable.

(2) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable.

(3) * * *

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless: The issuer determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates was less than $60 million, as of the last business day of the issuer's most recently completed second fiscal quarter; or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable. An issuer that makes either of these determinations becomes a non-accelerated filer. The issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

(iii) Once an issuer becomes a large accelerated filer, it will remain a large accelerated filer unless: It determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates (''aggregate worldwide market value'') was less than $560 million, as of the last business day of the issuer's most recently completed second fiscal quarter or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable. If the issuer's aggregate worldwide market value was $60 million or more, but less than $560 million, as of the last business day of the issuer's most recently completed second fiscal quarter, and it is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, as applicable, it becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than $60 million, as of the last business day of the issuer's most recently completed second fiscal quarter, or it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, it becomes a non-accelerated filer. An issuer will not

become a large accelerated filer again unless it subsequently meets the conditions in paragraph (2) of this definition.

* * * * *

(4) For purposes of paragraphs (1), (2), and (3) of this definition only, a business development company is considered to be eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition in this section, provided that the business development company meets the requirements of the test using annual investment income under Rule 6–07.1 of Regulation S–X (17 CFR 210.6–07.1) as the measure of its ''annual revenues'' for purposes of the test.

* * * * *

Smaller reporting company. * * *

Instruction 2 to definition of ''smaller reporting company'': A foreign private issuer is not eligible to use the requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 8. Amend Form 20–F (referenced in § 249.220f) by adding a field to the cover page to include a check box indicating whether the registrant has included an ICFR auditor attestation in the filing:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

†The term ''new or revised financial accounting standard'' refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. □

* * * * *

■ 9. Amend Form 40–F (referenced in § 249.240f) by adding a field to the cover page to include a check box indicating whether the registrant has included an ICFR auditor attestation in the filing:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 40–F

* * * * *

†The term ''new or revised financial accounting standard'' refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. □

* * * * *

■ 10. Amend Form 10–K (referenced in § 249.310) by adding a field to the cover page to include a check box indicating whether the registrant has included an ICFR auditor attestation in the filing:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

* * * * *

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. □

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. □

* * * * *

By the Commission.

Dated: March 12, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–05546 Filed 3–25–20; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 60 and 63
National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0047; FRL–10006–05–OAR]

RIN 2060–AU18

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Municipal Solid Waste (MSW) Landfills source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; reorganize rule text to incorporate provisions from the new source performance standards (NSPS) within this subpart; and add requirements for electronic reporting of performance test results. The EPA is also finalizing minor changes to the MSW Landfills NSPS and Emission Guidelines (EG) and Compliance Times for MSW Landfills. Specifically, the EPA is finalizing provisions to the most recent MSW Landfills NSPS and EG that would allow affected sources to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements by following the corresponding requirements in the MSW Landfills NESHAP. These final amendments will result in improved compliance and implementation of the rule.

DATES: This final rule is effective on March 26, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 26, 2020.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0047. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Andrew Sheppard, Natural Resources Group, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4161; fax number: (919) 541–0516; and email address: *Sheppard.Andrew@epa.gov.* For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *Hirtz.James@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW, Washington DC 20460; telephone number: (202) 564–7027; and email address: *Malave.Maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CO carbon monoxide
EG emission guidelines
ERT Electronic Reporting Tool
FEMA Federal Emergency Management Agency
GCCS gas collection and control system
HAP hazardous air pollutant(s)
HOV higher operating value
HQ hazard quotient
IBR incorporation by reference km kilometer
LFG landfill gas
MACT maximum achievable control technology
Mg/yr megagrams per year
MSW municipal solid waste
NAICS North American Industry Classification System
NARA National Archives and Records Administration
NESHAP national emission standards for hazardous air pollutants
NMOC non-methane organic compounds
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
ppmv parts per million by volume
PRA Paperwork Reduction Act
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SOE subsurface oxidation event
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act

Background information. On July 29, 2019, the EPA proposed revisions to the MSW Landfills NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP,* available in Docket ID No. EPA–HQ–OAR–2002–0047. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the MSW Landfills source category and how does the NESHAP regulate HAP emissions from the source category?

C. What changes did we propose for the MSW Landfills source category in our July 29, 2019, RTR proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the MSW Landfills source category?
B. What are the final rule amendments based on the technology review for the MSW Landfills source category?
C. What are the final rule amendments addressing emissions during periods of SSM?
D. What other changes have been made to the MSW Landfills NESHAP?
E. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the MSW Landfills source category?
A. Residual Risk Review for the MSW Landfills Source Category
B. Technology Review for the MSW Landfills Source Category
C. SSM for the MSW Landfills Source Category
D. Summary of Changes Since Proposal
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
Municipal Solid Waste Landfills	562212
Air and Water Resource and Solid Waste Management	924110
State, Local, and Tribal Government Agencies	924110

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by May 25, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of

materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 84 FR 36670 (July 29, 2019).

B. What is the MSW Landfills source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the MSW Landfills NESHAP on January 16, 2003 (68 FR 2227). The standards are codified at 40 CFR part 63, subpart AAAA. As promulgated in 2003 and further amended on April 20, 2006 (71 FR 20462), the NESHAP regulates HAP emissions from MSW landfills that are either major or area sources.

The NESHAP applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and have estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of non-methane organic compounds (NMOC). The NESHAP also applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 that were not permanently closed as of January 16, 2003.

The majority of HAP emissions at MSW landfills come from the continuous biodegradation of the MSW in the landfill and the formation of landfill gas (LFG) emissions. LFG emissions contain methane, carbon dioxide, and more than 100 different NMOC. The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene (61 FR 9906, March 12, 1996). The owner or operator of a landfill may control the gas by routing it to a non-enclosed flare, an enclosed combustion device, or a treatment system that processes the collected gas for subsequent sale or beneficial use.

The NESHAP regulates HAP emissions by requiring MSW landfills that exceed the size and emission thresholds to install and operate a landfill gas collection and control system (GCCS). The NESHAP achieves emission reductions through a well-designed and well-operated landfill GCCS with a control device (*i.e.,* non-enclosed flare, enclosed combustion device, or treatment system) capable of reducing NMOC by 98 percent by weight. NMOC is a surrogate for LFG. The GCCS must be installed within 30 months after an MSW landfill that equals or exceeds the design capacity threshold (2.5 million Mg and 2.5 million m^3) reaches or exceeds an NMOC emissions level of 50 Mg/yr. The landfill must expand the system to collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for 5 years or more if active; or 2 years or more if closed or at final grade. The collection and control system may be capped or removed when the landfill is closed, the system has operated 15 years, and NMOC emissions are below 50 Mg/yr.

In addition, the NESHAP requires timely control of bioreactors. A bioreactor is an MSW landfill or portion of the landfill where any liquid other than leachate is added to the waste mass to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the biodegradation of the waste. New bioreactors must install the GCCS in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate; existing bioreactors must install the GCCS before initiating liquids addition and must begin operating the GCCS within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later.

Based on modeled emission estimates in the 2016 NSPS/EG datasets, and supplementary searching of the Greenhouse Gas Reporting Program data (located in 40 CFR part 98, subpart HH), the EPA Landfill Methane Outreach Program, Landfill and LFG Energy Project Database, and selected permits, as of 2014, there were between 664 and 709 MSW landfills subject to the LFG collection and control requirements of the NESHAP. The exact list of facilities subject to the NESHAP is unknown because many landfills collect site-specific data for NMOC concentrations using the Tier 2 provisions allowed under the regulation to compute the NMOC annual emission rates. A list of facilities expected to be subject to the NESHAP based on modeled emissions and a default NMOC concentration of 595 parts per million by volume (ppmv)

[1] The court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

is available in the RTR dataset.[2] It is estimated that these landfills emit between 2,242 and 4,586 Mg/yr of HAP, after considering current control requirements. Most of these emissions are fugitive emissions.

C. What changes did we propose for the MSW Landfills source category in our July 29, 2019, RTR proposal?

On July 29, 2019, the EPA published a proposed rule in the **Federal Register** for the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), that took into consideration the RTR analyses (84 FR 36670). Based on the risk analysis, we proposed to find that the risks from the MSW Landfills source category are acceptable. The risk analysis estimated that the cancer risk to the individual most exposed is below 10-in-1 million from both actual and allowable emissions (estimated cancer incidence is 0.04 excess cancer cases per year, or 1 case every 20 years). The risk analysis also estimated a maximum chronic noncancer target organ-specific hazard index (TOSHI) value below 1.

Our risk analysis indicated the risks from this source category are low for both cancer and noncancer health effects, and, therefore, we proposed that any risk reductions to further control fugitive landfill emissions would result in minimal health benefits (84 FR 36686, July 29, 2019). We also proposed that the current NESHAP provides an ample margin of safety to protect public health (84 FR 36686, July 29, 2019). In addition, pursuant to the technology review for the MSW Landfills source category, we proposed that no revisions to the current standards are necessary because, after analyzing the available options, we determined that each is either not technically feasible or the cost is not justified for the level of emission reduction achievable (84 FR 36689, July 29, 2019).

In addition to the proposed decisions resulting from the RTR described above, we proposed revisions to the NESHAP to promote consistency between MSW landfills regulations under CAA sections 111 and 112. We also proposed changes to the wellhead temperature operating standards and associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature. We proposed to adjust provisions for GCCS removal to provide additional flexibility for landfill owners and operators. In addition, we proposed updates to SSM and electronic reporting requirements.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the MSW Landfills source category. This action also finalizes other changes to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), including changes to promote consistency between MSW landfills regulations under CAA sections 111 and 112 and changes to the wellhead temperature operating standards, including associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature. This final rule also provides additional flexibility for landfill owners and operators by adjusting the provisions for GCCS removal. In addition, SSM and electronic reporting requirements have been updated. This action also reflects several changes to the July 2019 RTR proposal in consideration of comments received during the public comment period described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the MSW Landfills source category?

This section introduces the final amendments to the NESHAP being promulgated pursuant to CAA section 112(f). The risks from this source category are low for both cancer and noncancer health effects and we proposed that the risks are acceptable. We received only comments in support of the proposed determination. We are finalizing our determination that risks from this source category are acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not finalizing any revisions to the NESHAP based on our analyses conducted under CAA section 112(f). Section IV.A.3 of this preamble provides a summary of key comments we received regarding risk review and our responses.

B. What are the final rule amendments based on the technology review for the MSW Landfills source category?

The technology review identified three types of developments that could lead to additional control of HAP from MSW landfills. The three potential developments are practices to reduce HAP formation within a landfill, to collect more LFG for control or treatment, and to achieve a greater level of HAP destruction in the collected LFG. As stated in the proposal preamble (84 FR 36686–36689, July 29, 2019) none of these developments were deemed to be cost effective. We are finalizing our determination, as proposed, that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments addressing emissions during periods of SSM?

We are finalizing the proposed amendments to the MSW landfills standards to remove and revise provisions related to SSM. Within its 2008 decision in *Sierra Club* v. *EPA* 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. As detailed in section IV.D.8 of the proposal preamble (84 FR 36693–36697, July 29, 2019), we proposed that the NESHAP standards apply at all times (see 40 CFR 63.1930(b)), consistent with the court's decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). The EPA is finalizing the SSM provisions as proposed with minimal changes.

We are finalizing a work practice requirement that applies whenever the GCCS is not operating. The work practice requirement appears at 40 CFR 63.1958(e) and is explained in the proposal preamble (84 FR 36695, July 29, 2019).

Further, the EPA is not setting separate standards for malfunction events. As discussed in the proposal preamble (84 FR 36694, July 29, 2019), the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. Although we are not setting separate standards for malfunction events, we are setting a work practice standard for when the GCCS is not operating, which could include periods of malfunction. Whenever a landfill operator is complying with the work practice for periods when the GCCS is not operating,

[2] MSW Landfills NESHAP RTR Draft Emissions Modeling File. May 2018. Available at: *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.*

it is unlikely that a malfunction would result in a violation of the standards, and no comments were submitted that would suggest otherwise. Refer to 84 FR 36694 of the proposal preamble for further discussion of the EPA's rationale for the decision not to set separate standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event. The administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations, including malfunction events.

We are also finalizing revisions to Table 1 of subpart AAAA, part 63, titled *Applicability of NESHAP General Provisions to Subpart AAAA,* as explained in more detail in the SSM section of the proposal preamble (84 FR 36693, July 29, 2019), to eliminate requirements that include rule language providing an exemption for periods of SSM. Additionally, we are finalizing our proposal to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction.

The legal rationale and detailed changes for SSM periods that we are finalizing are set forth in the proposed rule (84 FR 36693, July 29, 2019). As discussed in section IV.C of this preamble, the EPA is making it clear that the semi-annual report must describe the date, time, and duration of periods during which an operating standard was exceeded, as well as when the GCCS was not operating. For more information, see the response to comments document, titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP,* which is available in the docket for this action.

D. What other changes have been made to the MSW Landfills NESHAP?

This rule finalizes, as proposed, revisions to several NESHAP requirements that promote consistency among MSW landfills regulations developed under CAA sections 111 and 112. This rule also finalizes revisions to the 2016 NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) to promote consistency among MSW landfills regulations under the CAA. Most of these changes are the same as those proposed at 84 FR 36670 on July 29, 2019.

This rule also finalizes minor changes to other provisions of the NESHAP since proposal. Specific changes made since proposal are discussed in section IV.C of this preamble. Revisions to the NESHAP, NSPS, and EG include:

1. Reorganization of the NESHAP

We are finalizing the reorganization of the NESHAP to incorporate the major compliance provisions from the MSW Landfills NSPS program directly into the NESHAP, thus, minimizing cross-referencing to other subparts and consolidating requirements between the NSPS program and the NESHAP. With the incorporation of the major compliance provisions from the 2016 NSPS (subpart XXX), we, thus, incorporated revisions to subpart XXX that were finalized in 2016. In addition, we clarified which of the reorganized provisions apply no later than 18 months after publication of the final rule.

2. Revisions to the 1996 NSPS (40 CFR Part 60, Subparts WWW) and the 2016 NSPS and EG (40 CFR Part 60, Subparts XXX and Cf)

The EPA is clarifying that subpart Cf (once implemented via a state or federal plan) supersedes subparts WWW and Cc. The final rule revises the title and applicability of subpart WWW (at 40 CFR 60.750(a)) to distinguish the applicability dates from other landfills subparts. We clarify that after the effective date of an EPA-approved state or tribal plan implementing subpart Cf, or after the effective date of a federal plan implementing subpart Cf, owners and operators of MSW landfills must comply with the approved and effective state, tribal, or federal plan implementing subpart Cf instead of subpart WWW or the state or federal plan implementing subpart Cc.

3. NSPS and EG (Subparts XXX and Cf) Opt-In Provisions for NESHAP

We are finalizing minor edits to the 2016 NSPS and EG regulations allowing MSW landfills affected by the NSPS and EG to demonstrate compliance with the ''major compliance provisions'' of the NESHAP in lieu of complying with the analogous provisions in the NSPS and EG. This change allows landfills to follow one set of operational, compliance, monitoring, and reporting provisions for pressure and temperature. The differences between the landfills subparts are identified in the memorandum titled *Comparison of Municipal Solid Waste (MSW) Landfills Regulations,* which is available in the docket for this action.

4. Operational Standards for Wellheads

a. Nitrogen and Oxygen Concentrations

The EPA is finalizing the elimination of the operational standards and the corresponding corrective action for nitrogen and oxygen concentrations in the NESHAP for consistency with the 2016 NSPS and EG (subparts XXX and Cf). The EPA concluded that nitrogen and oxygen concentrations are not, by themselves, effective indicators of proper operation of the LFG collection system (see 81 FR 59346, August 29, 2016).

b. Increased Wellhead Temperature Operating Standard

The EPA is finalizing an increase of temperature standard to 145 degrees Fahrenheit (°F). The EPA is finalizing the increased wellhead temperature operating standard in the NESHAP to reduce the burden on regulated entities and delegated state, local, and tribal agencies. This change is expected to reduce the number of requests and burden associated with submitting and reviewing the requests for higher operating values (HOVs) for temperature, as well as reduce the frequency of corrective actions for exceeding the temperature limit. This change provides landfill owners and operators greater flexibility and autonomy with regards to wellhead monitoring and operations.

5. Corrective Action for Wellhead Operating Standards

The EPA is finalizing the elimination of the requirements for corrective action for nitrogen and oxygen concentrations in the NESHAP to maintain consistency with the requirements in the 2016 NSPS and EG (subparts XXX and Cf). The operating standard for nitrogen and oxygen has already been eliminated in those rules. In the NESHAP, the EPA is finalizing changes to the corrective action procedures to address positive pressure and elevated temperature to provide flexibility to owners or operators in determining the appropriate remedy, as well as the timeline for implementing the remedy. The changes to the timeline and the process for correcting for positive pressure and elevated temperature make the NESHAP requirements consistent with the current requirements of the NSPS and EG, except that the requirements for corrective action procedures being proposed in the NESHAP are tied to the exceedance of the 145 °F standard, instead of the 131 °F standard that still applies in the NSPS and EG.

6. Enhanced Monitoring, Recordkeeping, and Reporting for High Wellhead Temperatures

The EPA is finalizing the addition of enhanced wellhead monitoring and visual inspection requirements for any landfill with wellhead temperature exceeding 145 °F. Enhanced monitoring in the final rule involves weekly observations for subsurface oxidation events (SOE), as well as weekly monitoring of wellhead temperature, carbon monoxide (CO), oxygen, and methane using an analyzer that meets all quality assurance and quality control requirements for EPA Methods 10, 3C, or 18. Enhanced monitoring begins 7 days after the first reading exceeding 145 °F is recorded and continues until the measured wellhead operating temperature is 145 °F or less, or an HOV is approved. The proposed rule required a landfill to continue weekly enhanced monitoring until an HOV was approved or until the LFG temperature at the wellhead reached less than or equal to 62.8 degrees Celsius (°C) (145 °F). In the final rule, the EPA is allowing monthly CO monitoring if the wellhead has CO readings below 100 ppmv for four consecutive weeks. If the CO level exceeds 100 ppmv again, the landfill must return to weekly monitoring (see section IV.D of this preamble). Consistent with our proposal, the final rule requires enhanced monitoring data to be submitted in the semi-annual report and maintained as records. The EPA is finalizing the enhanced monitoring requirements as proposed except for the following changes:

- The EPA is removing the proposed requirement for an independent laboratory analysis of each CO measurement (see section IV.D of this preamble).
- The EPA is finalizing the proposed 24-hour electronic report for any well with highly elevated temperature (76.7 °C or 170 °F) and CO readings (40 CFR 63.1981(k)). In the final rule, the EPA reduced the CO threshold for the 24-hour electronic report from 1,500 ppmv to 1,000 ppmv (see section IV.D of this preamble). The EPA adjusted the corresponding corrective action for wells that have any wellhead temperature reading of 170 °F or above and CO reading of 1,000 ppmv. The report is not required for landfills that have an HOV approved by the Administrator.
- The EPA is finalizing the proposed downwell monitoring. However, in the final rule, downwell monitoring is conducted annually, instead of weekly. Additionally, the annual downwell monitoring is only required for wellheads that have any temperature reading of 165 °F or above (see section IV.D of this preamble).

7. Criteria for Removing GCCS

The EPA is finalizing as proposed the added flexibility to the NESHAP for determining when it is appropriate to cap, remove, or decommission a portion of the GCCS (40 CFR 63.1957(b)). The NESHAP requires three criteria to be met to remove controls: (1) The landfill is closed, (2) the calculated NMOC emission rate at the landfill is less than 50 Mg/yr on three successive test dates, and (3) the GCCS has operated for at least 15 years. In this final rule, we updated the third criterion to allow the landfill owner or operator to choose between the 15 years of GCCS operation or demonstrate that the GCCS will be unable to operate for 15 years due to declining gas flows.

8. Definition of Cover Penetration

To clarify the implementation concerns, the EPA is finalizing as proposed the phrase, ''. . . at all cover penetrations'' to the regulatory text of the NESHAP (40 CFR 63.1958(d)), consistent with this phrase in the 2016 NSPS and EG (subparts XXX and Cf). We are also adding a definition of cover penetration as proposed. At 40 CFR 63.1958(d), we are clarifying the surface monitoring provisions by requiring monitoring at any ''cover penetrations'' rather than at ''any openings.'' And we are clarifying that the landfill owner or operator must determine the latitude and longitude coordinates ''of each exceedance.''

9. Electronic Reporting

The EPA is requiring owners and operators of new or modified MSW landfills to electronically submit required performance test reports, NMOC Emission Rate Reports, Bioreactor 40-percent moisture reports, and semi-annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI) (40 CFR 63.1981(l)). The final rule requires that performance test results be submitted using the Electronic Reporting Tool (ERT). Alternatively, MSW landfills may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. For more details, see the Electronic Reporting section of the proposal preamble (84 FR 36693, July 29, 2019). For NMOC Emission Rate Reports, Bioreactor 40-percent moisture reports, and semi-annual reports, the final rule requires that owners and operators use the appropriate spreadsheet template/forms to submit information to CEDRI when it becomes available on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*). The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. For a more thorough discussion of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2002–0047.

10. Other Clarifications and Changes To Conform With the NSPS

In 2016, the EPA finalized its review of the 1996 NSPS (40 CFR part 60, subpart WWW) and made revisions (40 CFR part 60, subpart XXX) to simplify and streamline implementation of the rule. Note that some of the revisions were proposed as early as 2002 and 2006. With the incorporation of compliance provisions from the NSPS into the NESHAP as part of this rulemaking, we are likewise finalizing the following provisions from the NSPS:

- Allowing the use of portable gas composition analyzers to monitor the oxygen level at a wellhead (40 CFR 63.1961(a)).
- Requiring owners and operators to report more precise locational data for each surface emissions exceedance to provide a more robust and long-term record of GCCS performance and more easily locate and correct breaches in the landfill cover (40 CFR 63.1961(f)).
- Refining the criteria for updating a design plan by requiring landfill owners or operators to submit an updated design plan for approval based on the following criteria: (1) Within 90 days of

expanding operations to an area not covered by the previously approved design plan; and (2) before installing or expanding the gas collection system in a way that is not consistent to the previous design plan (40 CFR 63.1981(e)).

- Clarifying that in addition to use as a fuel for stationary combustion devices, use of treated LFG also includes other uses such as the production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process (40 CFR 63.1959(b)).
- Standardizing the terms ''control system'' and ''collection and control system'' in the NESHAP in order to use consistent terminology throughout the regulatory text.
- Exempting owners/operators of boilers and process heaters with design capacities of 44 megawatts or greater from the requirement to conduct an initial performance test since large boilers and process heaters consistently achieve the required level of control (67 FR 36478, May 23, 2002).
- Removing the term ''combustion'' from the requirement to monitor temperature of enclosed combustors to clarify that temperature could be monitored at another location, as long as the monitored temperature relates to proper operation of the enclosed combustor (71 FR 53276, September 8, 2006).
- Refining definitions to ensure consistent use across federal landfills regulations (40 CFR 63.1990) of the terms: Treated landfill gas, Treatment system, Modification, Household waste, and Segregated yard waste.

11. Closed Areas

The EPA is maintaining the current approach to closed areas so that landfills subject to both the 2016 NSPS and EG and the NESHAP have a streamlined set of requirements to follow. The 2016 NSPS and EG allow landfill owners or operators to model NMOC emissions or take actual measurements of NMOC emissions at physically separated, closed areas of open landfills. The EPA has not expanded the term ''closed area'' to include areas that are not physically separated (*e.g.,* separately lined).

12. Changes to Definitions

The EPA expanded the list of definitions in the NESHAP to create a list that improves consistency between the 2016 NSPS, 1996 NSPS, and the NESHAP. The changes fall into the following categories:

- The 2003 MSW Landfills NESHAP included eight definitions. Five of these definitions remain the same. The EPA made changes to two of the original defined phrases. One of these phrases also has had a definition change. The original definition for ''deviation'' has been refined to reflect the updated SSM requirements.
- The EPA added a new definition for ''cover penetration'' based on public comments.
- To address public comments about definition consistency, the EPA included an additional 32 definitions that correspond to definitions in NSPS subparts XXX, WWW, or both. The EPA made minor updates to reflect current regulation references.

E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on March 26, 2020.

The compliance date for existing sources is January 16, 2004.

New sources must comply by January 16, 2003, or upon startup, whichever is later.

The compliance dates remain the same as proposed. The EPA is allowing facilities up to 18 months after March 26, 2020, to begin complying with the final rule. Affected MSW landfills must continue to comply with the existing requirements until they meet the new requirements.

IV. What is the rationale for our final decisions and amendments for the MSW Landfills source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, please see the comment summaries and the EPA's Response to Comments document, which are available in the docket.

A. Residual Risk Review for the MSW Landfills Source Category

1. What did we propose pursuant to CAA section 112(f) for the MSW Landfills source category?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the July 29, 2019, proposed rule for 40 CFR part 63, subpart AAAA (84 FR 36670). The results of the risk assessment are presented briefly in Table 2 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the MSW Landfills Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking.

TABLE 2—MSW LANDFILLS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual lifetime cancer risk (in 1 million) [2]		Based on actual emissions				
	Based on actual emissions [3] . . .	Based on allowable emissions . . .	Estimated population at increased risk of cance ≥1-in-1 million	Estimated population at increased risk of cancer ≥10-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer hazard quotient (HQ)
706	10 (p-dichlorobenzene, ethyl benzene, benzene).	10 (p-dichlorobenzene, ethyl benzene, benzene).	18,300	11	0.04	0.1 (neuro-logical)	HQ_{REL}[5] = 0.07 (chloroform).

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Whole facility emissions are equal to actual emissions and have the same risk.
[4] Maximum TOSHI. The target organ systems with the highest TOSHI for the source category are neurological, with risk driven by emissions of trichloroethylene, m-xylene, xylenes (mixed), and tetrachloroethene from fugitive emissions.
[5] Reference Exposure Level (REL).

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual, allowable, and whole facility emissions under the NESHAP, the maximum individual risk posed by the source category is 10-in-1 million. The total estimated cancer incidence based on actual emission levels is 0.04

excess cancer cases per year, or 1 case every 25 years. The total estimated cancer incidence based on allowable emission levels is 0.05 excess cancer cases per year, or 1 case every 20 years. Fugitive air emissions of benzene-based pollutants contributed approximately 50 percent to the cancer incidence. The population exposed to cancer risks greater than or equal to 1-in-1 million based upon actual emissions is 18,300. The population exposed to cancer risks greater than or equal to 10-in-1 million based upon actual emissions is 11. No individuals or groups are exposed to a chronic noncancer TOSHI greater than 1. The screening analysis for worst-case acute impacts indicates that no pollutants exceed an acute HQ value of 1 based upon the REL. Because none of the screening HQs were greater than 1, further refinement of the estimates was not warranted. A separate assessment of inhalation risk from facility-wide emissions was unnecessary because facility-wide emissions were the same as source category emissions. The multipathway risk screening assessment resulted in a maximum Tier 2 noncancer screening value of less than 1 for mercury. Mercury was the only persistent and bioaccumulative HAP emitted by the source category. Based on these results, we are confident that the human-health noncancer risks are below a level of concern. Mercury was the only environmental HAP identified from the category and the ecological risk screening assessment indicated that all modeled points were below the Tier 1 screening threshold. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all human health risk factors in our risk acceptability determination, and we proposed that the residual risks from the MSW Landfills source category are acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health, and whether more stringent standards were necessary to prevent an adverse environmental effect, by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provide an ample margin of safety to protect public health, we examined the same risk factors that we investigated for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk (or potential risks) associated with emissions from the source category. Our risk analysis indicated the risks from this source category are low for both cancer and noncancer health effects, and, therefore, any additional emissions reductions would result in minimal health benefits or reductions in risk. We note that fugitive landfill emissions result in 84 percent of the cancer incidence for this source category. Based upon results of the risk analysis and our evaluation of the technical feasibility and cost of the option(s) to reduce landfill fugitive emissions, we proposed that the current NESHAP provides an ample margin of safety to protect the public health. We also proposed, based on the results of our environmental screening assessment, that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the MSW Landfills source category?

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed.

3. What key comments did we receive on the risk review, and what are our responses?

We received comments that were generally supportive of the proposed residual risk review and our determination that no revisions were warranted under CAA section 112(f)(2) for the MSW Landfills source category. Commenters stated that the EPA's residual risk review approach was sufficiently conservative in its assumptions relating to facility emission profiles and supported the EPA's conclusion that the residual risk is acceptable and provides an ample margin of safety. One commenter stated that the modeling includes conservative features that is consistent with the National Ambient Air Quality Standards and conforms to many state programs and that EPA appropriately considered maximum exposed individuals, multi-pathway assessments, as well as specific populations by census blocks near actual facilities. The commenter also stated the EPA's emission factor data used for the proposed NESHAP is comprehensive considering the number of facilities referenced and the number of analytes assessed. However, another commenter expressed concern regarding the EPA's use of emission factors calculated using 2008 AP–42,[3] Chapter 2.4. The commenter stated that the modeling inputs were based on use of draft emission factors from an AP–42 section that was proposed in 2008 and remains a draft. The commenter stated that the use of a draft section creates confusion regarding the information it contains and sets an unclear precedent.

We disagree with the comment that the use of draft AP–42 emission factors introduces confusion or sets precedent for using these factors in other regulations. In the development of the risk analysis, we documented the rationale for using the emission factors from 2008 AP–42 Chapter 2.4 in the docketed memorandum, *Residual Risk Modeling File Documentation for the Municipal Solid Waste Landfill Source Category.*[4] Specifically, the 2008 AP–42 draft emission factor data, with subsequent adjustments made to reflect comments received on the draft for the risk analysis, represent the best available data for HAP emissions from landfills. The 1998 Final AP–42 chapter had factors for only 23 HAP, whereas the updated factors used in the risk analysis cover 49 HAP derived from a significantly larger dataset. By including a larger number of HAP in the factors used in the risk analysis, the analysis was conservative. The EPA is not suggesting in this preamble or in background documentation that the factors used are appropriate for other permitting or regulatory uses.

After review of these comments, we determined that no changes needed to be made to the underlying risk assessment methodology. The comments and our specific responses can be found in the response to comments document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP,* which is available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all of the comments on the EPA's risk review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we proposed that the risks from the MSW Landfills source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental

[3] U.S. EPA, AP–42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.* 1995. *http://www.epa.gov/ttnchie1/ap42/*.

[4] See Appendix 1, Section 7 to docket item, *Residual Risk Assessment for the Municipal Solid Waste Landfill Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* May 2019. Docket ID Item No. EPA–HQ–OAR–2002–0047–0091.

effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing the risk review as proposed.

B. Technology Review for the MSW Landfills Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the MSW Landfills source category?

Pursuant to CAA section 112(d)(6), we proposed to conclude that no revisions to the current NESHAP are necessary (section IV.C of the proposal preamble 84 FR 36686). In conducting the review, we identified developments in work practices and technologies to reduce HAP formation, collect additional HAP, and destroy additional HAP from MSW landfills. We ruled out developments in waste diversion programs, which can reduce HAP formation, as technically infeasible, because programs to ban or recycle wastes instead of placing the wastes in the landfill are not typically under the control of landfill owners or operators. We analyzed the costs and emission reductions associated with earlier gas collection strategies, including a lower NMOC threshold and shortening the time in which a GCCS is required to expand into new areas of the landfill. Based on these analyses, we concluded that these options are not cost effective for HAP. We also analyzed the cost and emission reductions associated with destroying additional HAP in higher efficiency flares, and based on these analyses, we concluded that these options are not cost effective for HAP.

2. How did the technology review change for the MSW Landfills source category?

We have not changed any aspect of the technology review since the July 29, 2019, proposal for the MSW Landfills source category.

3. What key comments did we receive on the technology review, and what are our responses?

The comments received by the EPA on the technology review were generally supportive, with only one commenter challenging the EPA's findings regarding GCCS installation lag times. One commenter agreed that the EPA's findings regarding mandated source separation, earlier LFG collection, criteria, and timeframe for removing GCCS, early installation of landfill cover systems, enclosed flares, thermal oxidizers, energy recovery projects, and use of biocovers were infeasible, not cost-effective, or did not result in emissions reductions. Another commenter noted the limited innovation in HAP-reducing technologies and requested increased government funding for research in this area. One commenter challenged the EPA's determination that earlier gas collection, via shorter expansion lag times, is not economically feasible and asked the EPA to reevaluate its determination.

The EPA has not revised the technology review for the NESHAP to analyze the costs of shorter expansion lag times for certain landfills. The EPA agrees with the commenter that shorter lag times are commercially available. However, the installation of well components to achieve these shorter lag times requires site-specific analysis. For example, the timing of well installation is affected by waste placement patterns and annual acceptance rates. The EPA explored shorter lag times as part of the review for the 2016 NSPS and EG and received several comments related to site-specific costs and safety concerns associated with reduced lag times, urging the EPA to retain flexibility in any lag-time adjustments. See 79 FR 41807 (July 17, 2014) and 80 FR 52121 (August 27, 2015) for more details. The EPA has not received any comments suggesting that the cost and safety concerns brought forth as part of the 2016 rulemaking have changed, and as a result, no changes to the lag times are being finalized.

4. What is the rationale for our final approach for the technology review?

As explained in the proposal preamble (84 FR 36686, July 29, 2019), we conducted a technology review to identify developments in practices, processes, and control technologies that may warrant revisions to the current NESHAP. We identified three types of developments that could lead to additional control of HAP from MSW landfills, but we determined that there are no cost-effective developments in practices, processes, or control technologies to warrant revisions to the standards. We also evaluated the public comments on the EPA's technology review and determined that no changes to the review are needed. More information concerning our technology review is in the memorandum titled *CAA section 112(d)(6) Technology Review for the MSW Landfills Source Category,* in the docket for this action, and in the preamble to the proposed rule (84 FR 36686–36689, July 29, 2019). Therefore, pursuant to CAA section 112(d)(6), we are finalizing the results of the technology review as proposed.

C. SSM for the MSW Landfills Source Category

1. What did we propose for the MSW Landfills source category?

We proposed amendments to the NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 36693).

2. How did the SSM provisions change for the MSW Landfills source category?

We are finalizing the SSM provisions as proposed (84 FR 36693, July 29, 2019) with the minor changes described in section IV.C.3 of this preamble.

3. What key comments did we receive on the SSM provisions and what are our responses?

We received two comments related to our proposed revisions to the SSM provisions. The first commenter agreed that the NESHAP must apply at all times and with the approach of applying a work practice standard under CAA section 112(h) during periods of SSM. The second commenter requested that the EPA clarify that SSM events be reported as stated in the proposal preamble (84 FR 36696, July 29, 2019). A summary of the SSM comments on the proposal and the EPA's responses to those comments is available in the response to comments document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP,* which is available in Docket ID No. EPA–HQ–OAR–2002–0047.

The first commenter agreed that the work practice requirements of proposed 40 CFR 63.1958(e) are appropriate and consistent with a well-designed and operated LFG collection system. However, the commenter objected to the EPA's proposed preamble statements and rule revisions that specify that compliance with these provisions during SSM does not necessarily constitute compliance with the NESHAP. The commenter stated that these provisions are inconsistent with prior EPA decisions about appropriate landfill operation and are not compelled by the *Sierra Club* v. *EPA* decision.

Landfill emissions are produced by a continuous biological process that cannot be stopped or restarted. Therefore, the primary concern related to SSM is with malfunction of the landfill GCCS and associated monitoring equipment, not with the

startup or shutdown of the entire source. The SSM periods that are covered by the proposed additional work practice standard of 40 CFR 63.1958(e) are those periods when the landfill GCCS and associated monitoring equipment are not operating for any reason. During such periods, excess emissions to the atmosphere will occur. This additional work practice requires the owner or operator to shut down all valves in the collection and control system contributing to venting of the gas to the atmosphere within 1 hour and to minimize the downtime for making repairs to the collection and control system. Although this additional practice is necessary to reduce emissions associated with a GCCS outage, to minimize emissions also requires actions to prevent the shutdown of the GCCS. Although we agree with the commenter that some unavoidable circumstances may require that the GCCS system be shut down for short periods of time (*e.g.,* for tying in a system expansion, repair, and preventative maintenance), the frequency of shutdowns also can be affected by carelessness, ineffective operation and maintenance procedures, failure to properly train landfill operations staff, and other site-specific factors. Actions to prevent the shutdown of a GCCS may include a preventative maintenance program, expeditious repair or replacement of equipment that frequently fails, the use of valves and bypass systems to segregate portions of the GCCS that are undergoing expansion, maintenance, or repairs from those portions that are unaffected by the work, and the use of redundant equipment and controls so that the system can remain online even if one component fails to operate properly. Additional reasonable steps include the controls of vehicular equipment on the landfill to avoid damage to the GCCS or crushed pipes. This may include speed limits and traffic routes that avoid passing over buried ductwork or other equipment.

Another commenter requested the EPA clarify that SSM events be reported as stated in the proposal preamble (84 FR 36696, July 29, 2019) in order to evaluate whether the general duty to minimize emissions is being met. The commenter stated that while the preamble stated that reporting will be required (84 FR 36696, July 29, 2019), the rule only requires records of SSM events.

The EPA proposed to add recordkeeping requirements for startup and shutdown to 40 CFR 63.1983(c) (84 FR 36696, July 29, 2019). Because 40 CFR 63.1958(e) specifies a different standard for periods when the GCCS is not operating under normal conditions (which would include periods of startup, shutdown, and maintenance or repair), we noted that it will be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard. Thus, we proposed language in 40 CFR 63.1983(c)(6) to require that a landfill owner or operator report the date, time, and duration of each startup and shutdown period. However, the paragraphs we cited in the preamble and revised in the rule require only the records of such events.

The EPA agrees with the commenter that recordkeeping and reporting for SSM events needs to be clarified in the final rule. Thus, the EPA revised 40 CFR 63.1981(h)(1) to make it clear that the semi-annual report must describe the date, time, and duration of periods during which an operating standard was exceeded, as well as when the GCCS was not operating. The semi-annual report in 40 CFR 63.1981(h) does not require separate reporting of SSM events, but every exceedance, including when operating standards are exceeded and when the GCCS is not operating, must be reported including during SSM.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that the proposed amendments appropriately remove and revise provisions related to SSM not consistent with the requirement that the standards apply at all times. More information concerning the amendments we are finalizing for SSM is in the preamble to the proposed rule (84 FR 36693, July 29, 2019). Therefore, we are finalizing our approach for the SSM provisions as proposed with the clarifications described in section IV.C.3 of this preamble.

D. Summary of Changes Since Proposal

1. Enhanced Monitoring, Recordkeeping, and Reporting for Elevated Wellhead Temperature

Given concerns with fire risks from elevated temperatures, and the fact that parameters other than temperature can be indicators of a SOE, we proposed enhanced wellhead monitoring and visual inspections for subsurface oxidation events (40 CFR 63.1961(a)), and in some cases more frequent reporting (40 CFR 63.1981(k)), for any landfill with wellhead temperature exceeding 145 °F. The proposed enhanced monitoring included weekly monitoring of CO, oxygen, and methane. For each CO measurement, the EPA proposed to require an independent laboratory analysis (84 FR 36691, July 29, 2019). As part of enhanced monitoring, the EPA proposed weekly temperature monitoring every 10 vertical feet down the well (downwell monitoring).

Several commenters expressed concerns with the requirement for independent laboratory CO testing. One commenter observed that laboratory testing is expensive, and three commenters stated that requiring laboratory testing would extend the response time and not provide timely information that can help the landfill owner or operator improve compliance. One commenter also noted several concerns with the logistics of independent laboratory analysis, including concerns with the proposed test methods and sample transportation.

The EPA agrees with commenters that independent laboratory analysis could present logistical challenges and potentially increase costs. Shipping passivated canisters or multi-layer foil gas sampling bags could require specialized shipping and could delay results that could improve operation of the GCCS. Therefore, based on public comments, the EPA is removing the requirement for an independent laboratory to analyze each CO measurement. In the final rule, landfill owners or operators have the option to collect the sample and conduct analysis on-site, using purchased or rented equipment that meets the requirements of EPA Method 10. This could generate results quicker, enabling the owner or operator to adjust the GCCS in a more timely manner. Conducting the analysis on-site would also prevent the need to package and ship the canisters or bags, thus, saving shipping costs and eliminating the logistical concerns of shipping the samples.

One commenter expressed concerns with the indefinite term of the enhanced monitoring. The commenter advised that if CO readings are less than 1,500 ppmv, monitoring should not be required indefinitely, but instead cease after 3 consecutive months. The commenter observed that this approach is consistent with the requirements of the consent decrees in the docket and with historical HOV demonstrations.

Regarding when to stop enhanced CO monitoring, the EPA agrees with commenters because the weekly enhanced monitoring is not intended to continue indefinitely. In the proposal, there were two means to stop enhanced

weekly CO monitoring. Enhanced monitoring could be stopped once an HOV is approved, at which time the monitoring provisions issued with the HOV should be followed (40 CFR 63.1961(a)(5)(viii)). Alternatively, the enhanced monitoring could stop once the measurement of LFG temperature at the wellhead is below 145 °F (40 CFR 63.1961(a)(5)(viii)). In the final rule, the EPA is retaining these two means to stop enhanced CO monitoring. The EPA is also providing an opportunity to reduce the frequency of monitoring in the final rule while still maintaining sufficient data availability of wellhead parameters for those wells that consistently operate at higher temperatures. Specifically, the EPA is extending the frequency of enhanced monitoring. Enhanced monitoring must be conducted on a weekly basis. However, if four consecutive weekly CO readings are below 100 ppmv, then monitoring may be decreased to a monthly basis. If the CO level exceeds 100 ppmv again, the landfill must return to weekly monitoring. Additionally, the EPA is specifically clarifying in the final rule that HOVs that have been previously approved under another MSW Landfill NSPS or EG regulation will not have to seek pre-approval for that HOV under the provisions in the NESHAP (40 CFR 63.1961(a)(5)).

One commenter expressed concern with the proposed 1,500 ppmv threshold for CO, asserting that 1,000 ppmv would be a more reasonable upper limit for detecting or preventing landfill fires. The EPA agrees with the commenter. The EPA reexamined the MSW Landfills consent decrees cited in the proposed rule; documents from CalRecycle, the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers, and the Solid Waste Association of North America. These documents (see Docket ID No. EPA–HQ–OAR–2002–0047) all cite a 1,000 ppmv CO concentration as an indication of an underground landfill fire, in combination with other factors. Additionally, a guidance document from the Ohio EPA for subsurface heating events refers to the CO concentration cited in the FEMA and CalRecycle documents. Two of the consent decrees, Forward and Central Maui, require 24-hour electronic notification to the delegated authority for any CO reading of 1,000 ppmv or above. For these reasons, the EPA is reducing the reporting threshold for CO from 1,500 ppmv to 1,000 ppmv in the final rule.

One commenter expressed support for the downwell temperature reading requirement. However, another commenter warned that the downwell monitoring may not be achievable or yield meaningful data, noting that installation of thermocouples to measure well temperature may not be possible on a well that is already constructed due to shifting in the well as settlement occurs. The commenter also noted that if wells have been raised with solid pipe, or the boring log does not provide accurate as-built information, the data may not be meaningful. Another commenter requested that the EPA eliminate the downwell temperature monitoring requirement. The commenter observed that the EPA claims that the proposed enhanced monitoring for well temperature is intended to facilitate the detection of a subsurface fire, yet the solid waste industry has long recognized that subsurface fires occur near the surface, require oxygen, are visually recognizable, and are addressed with known remedies. The commenter asserted that weekly downwell measurements could be counter-productive and inconsistent with the GCCS best management practices or challenging to implement.

The EPA reexamined the consent decrees and supporting documents and agrees with the commenters that weekly downwell monitoring could be potentially burdensome to implement. Requirements for conducting downwell temperature monitoring is in only the referenced consent decrees and not prescribed in the other supporting documents. Although the 2009 Ohio EPA best management practices document [5] suggests that inter-well and intra-well temperature data may be useful, it does not require those data in all cases. For these reasons, the EPA is reducing the frequency of downwell monitoring from weekly to annually. Annual downwell temperature monitoring will provide more robust data on waste temperatures throughout the radius of influence of the well. In addition, the EPA is increasing the wellhead temperature threshold that triggers downwell monitoring. In the final rule, downwell monitoring is required for wellhead temperatures of 165 °F or greater rather than 145 °F. The EPA believes the downwell monitoring data to be critical for assessing the operations of wells with these higher temperatures in order to minimize fire risks. The EPA expects that these changes will reduce the burden and implementation challenges associated with downwell monitoring.

Because the EPA has changed the frequency of CO monitoring and downwell temperature monitoring, the EPA has modified the requirement to include a well-specific summary trend analysis in the semi-annual report (40 CFR 63.1981(h)(8)(ii)) to remove the downwell temperature and recognizes that CO monitoring may occur on a monthly or weekly basis depending on the level at the well. Additionally, the EPA has removed the requirement to submit a 24-hour high temperature report if the well is subject to an approved HOV for temperature (40 CFR 63.1981(k)).

The EPA has also adjusted the enhanced monitoring provisions at 40 CFR 63.1961(a)(5) to remove the upper bound limitation of 170 °F. Enhanced monitoring should continue until both this temperature level and a CO level of 1,000 ppmv have been reached, at which point the provisions 40 CFR 63.1960(a)(4)(i)(D) and 63.1981(k) apply. Consistent with the proposed preamble (80 FR 36692, July 29, 2019), high temperatures in combination with high levels of CO are considered a positive indication of an active underground fire. The EPA has adjusted the requirements for the records and reports associated with these enhanced monitoring data to remove the upper bound limitation.

2. Delegation of Authority

Commenters expressed concerns with the EPA's proposed delegation of authority language (40 CFR 63.1985(c)). The EPA proposed at 40 CFR 63.1985(c) that the EPA will not delegate ''approval of alternatives to the standards'' in 40 CFR 63.1955–63.1962, which the commenters interpreted to include authority to approve alternatives to monitoring (*i.e.,* HOVs). Thus, the commenters contend that the language restricts delegated state or local agencies from approving or disapproving HOVs and other alternatives that are needed to reflect a source's site-specific conditions. The commenters claim that the proposed provision will lead to confusion in the compliance and enforcement work of the delegated states or create conflicts wherein a state agency and the EPA disagree. One commenter contended that the proposal allows the EPA to approve an HOV by incorporating additional monitoring requirements. The commenter questioned whether incorporation of applicable NSPS-required limits and corrective actions in the title V permits would preclude the applicability of flexibility outside these terms. Another commenter was concerned that the

[5] Ohio EPA. *Guidance Document for Higher Operating Value Demonstrations. http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc.*

NESHAP was much more restrictive in the items that could be delegated than the NSPS and that this would create conflict between the EPA and delegated authorities.

The EPA disagrees that proposed 40 CFR 63.1985(c) includes authority to approve HOVs. The EPA did not intend to preclude state or local agencies from approving or disapproving HOVs and other alternatives that are needed to reflect a source's site-specific conditions. The final NESHAP directly incorporates the major compliance provisions of the NSPS rules (subparts WWW and XXX). Consistent with the NSPS rules, the final NESHAP allows owners or operators to establish an HOV for temperature at a particular well (40 CFR 63.1958(c)(1)). The owner or operator must submit a request for an HOV, along with supporting data, to the Administrator for approval. Also consistent with the NSPS rules, the collection and control system design plan may include for Administrator approval collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions. The Administrator or delegated authority would review and approve the HOV or design plan.

The EPA recognizes that proposed 40 CFR 63.1985(c) does not reflect its intent and may have caused confusion. In 40 CFR 63.1985(c), the EPA retains authority to approve ''alternatives to the standards'' in 40 CFR 63.1955–63.1962. Commenters incorrectly interpreted that the term ''alternative emission standards'' includes authority to approve HOVs. The term ''emission standards'' is defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, establishing an allowance system, or prescribing equipment specifications for control of air pollution emissions.'' The EPA intends the use of the phrase ''alternative emission standards'' to refer to the ''Standards'' for MSW landfill emissions in 40 CFR 63.1955–63.1962. The EPA does not intend ''alternative emission standards'' to include alternatives for wellhead monitoring in 40 CFR 63.1958. The EPA also does not intend to retain authority to review and approve gas collection and control design plans.

Thus, based on public comments, the EPA is revising 40 CFR 63.1985(c) to reflect the EPA's intent, which is not to preclude states or other delegated authorities from approving HOVs and design plans. The EPA will delegate authority to approve HOVs and design plans. However, consistent with the NSPS, the final rule retains the EPA's authority to approve alternative methods for determining the NMOC concentration in 40 CFR 63.1959(a)(3) and a site-specific methane generation rate constant in 40 CFR 63.1959(a)(4).

3. Technical Corrections

Based on public comments, the EPA made several technical corrections and clarifications to make clear the requirements of the regulation.

- 40 CFR 60.38f(k) and 60.767(j). Clarified that if an MSW landfill owner or operator is complying with the major compliance provisions of the NESHAP, then the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in the NESHAP (40 CFR 63.1981(j)) in lieu of the corresponding timeline reporting requirements of the EG or NSPS, respectively.
- 40 CFR 60.39f(e)(6). Corrected a typographical error. Removed the word ''you'' and retained ''owner or operator.''
- 40 CFR 60.750. Clarified that an affected MSW landfill continues to comply with 40 CFR part 60, subpart WWW until it becomes subject to the more stringent requirements in an approved and effective state or federal plan that implements 40 CFR part 60, subpart Cf of this part, or until it modifies or reconstructs after July 17, 2014, and, thus, becomes subject to subpart XXX.
- 40 CFR 60.768(e)(6). Corrected a typographical error. Removed the word ''you'' and retained ''owner or operator.''
- 40 CFR 63.1947(a)(2). Corrected typographical error. Refer to 40 CFR 63.1982(c) and (d) instead of 40 CFR 63.1980(g) and (h) for moisture calculations.
- 40 CFR 63.1955(a). Clarified that alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions that have already been approved under 40 CFR part 60, subpart XXX can be used to comply with the NESHAP.
- 40 CFR 63.1960(a)(4)(i). Corrected typographical error. Removed the phrase, ''for the purpose of identifying whether excess air infiltration exists'' because the phrase does not apply to temperature.
- 40 CFR 63.1960(a)(4)(i)(D). Clarified that if the LFG temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 °C (170 °F) and the CO concentration measured is greater than or equal to 1,000 ppmv, the owner or operator must complete the corrective action(s) for the wellhead temperature standard (62.8 °C or 145 °F) within 15 days.
- 40 CFR 63.1960(e). Corrected reference from 40 CFR 63.1958(c) to 40 CFR 63.1958(e) to refer to SSM requirements.
- 40 CFR 63.1961(a)(5). Clarified that landfills with previously approved HOVs for temperature under various landfills subparts are not required to conduct enhanced monitoring.
- 40 CFR 63.1961(a)(5)(vii). Corrected reference from paragraph (a)(4) to (a)(5) to reference enhanced monitoring requirements.
- 40 CFR 63.1981(h)(1), (h)(1)(i), and (h)(1)(ii). Clarified that the semi-annual report must include the date, time, and duration of ''each exceedance'' of the applicable monitoring parameters, not ''each failure.''
- 40 CFR 63.1983(e)(2)(i). Corrected paragraph numbering to be (i), (ii), and (iii) instead of (i), (i), and (ii) and corrected cross-reference to the enhanced monitoring provisions in 40 CFR 63.1961(a)(5).
- 40 CFR 63.1990. Definition of controlled landfill. Clarified that the landfill is a controlled landfill when a collection and control system design plan is submitted in compliance with 40 CFR 60.752(b)(2)(i) or in compliance with 40 CFR 63.1959(b)(2)(i), regardless of whether that submittal is within 18 months after date of publication of the final rule in the **Federal Register**.
- Table 1 to subpart AAAA of part 63. Expanded to indicate which initial notifications apply before and which notifications apply after the date 18 months after publication of the final rule in the **Federal Register**. Added ''Yes'' entries for 40 CFR 63.6(i) and (j), and 40 CFR 63.10(a) to show applicability after the initial 18-month timeframe. Added a ''No'' entry for 40 CFR 63.10(c).

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

We anticipate that approximately 738 active or closed MSW landfills in the United States and territories will be affected by these final amendments in the year 2023. This number is based on all landfills that accepted waste after November 8, 1987, that have a design capacity of at least 2.5 million Mg and 2.5 million m^3. In addition, this number reflects the subset of landfills meeting these two criteria with modeled emission estimates of 50 Mg/yr NMOC or greater that have installed controls on or before 2023. While the EPA

recognizes some uncertainty regarding which landfills have actually exceeded the emission threshold, given the allowance of sites to estimate emissions using Tiers 1, 2, or 3, and the site-specific nature of NMOC concentrations, the number of MSW landfills that are collocated with major sources and, therefore, also subject to control requirements under this rule is also unknown. Therefore, 738 is the best estimate of the affected sources.

B. What are the air quality impacts?

The final amendments are expected to have a minimal impact on air quality. While these amendments do not require stricter control requirements or work practice standards on landfills to comply with the proposed amendments, some landfills may find that the adjustments made to the oxygen, nitrogen, and temperature wellhead standards finalized herein provide enough operational flexibility to install, expand, and operate additional voluntary GCCS, which could reduce emissions. The other proposed revisions that affect testing, monitoring, recordkeeping, and reporting will ensure that the GCCS equipment continues to perform as expected and provide reliable data from each facility to be reported for compliance.

C. What are the cost impacts?

The EPA has estimated $0 compliance costs for all new and existing sources affected by this final rule, beyond what is already required under the existing NESHAP and what is already included in the previously approved information collection activities contained in the existing NESHAP (Office of Management and Budget (OMB) control number 2060–0505), as described in section VI.C of this preamble. Furthermore, landfills accepting waste after November 8, 1987, must comply with the similar, yet, more stringent requirements of the 2016 NSPS or a plan implementing 40 CFR part 60, subpart Cf. Many of the changes in these amendments better align the NESHAP with the requirements of the NSPS and plans implementing subpart Cf. These changes simplify compliance, which in turn could reduce costs. For example, elimination of the wellhead operating standards for oxygen and nitrogen to match requirements in the NSPS will reduce the number of requests for HOVs, which in turn could decrease compliance costs.

The EPA maintains that final changes to enhanced monitoring for wellhead temperature are not estimated to incur a cost. The EPA is finalizing a temperature standard that is 14 °F higher than the standard that currently exists in the baseline regulations in order to provide additional flexibility to controlled landfills. However, ultimately, the requirement in the final NESHAP remains to install and operate a well-designed and well-operated GCCS. The EPA is not requiring enhanced monitoring from all controlled landfills, but this option is being made available as a compliance flexibility to the population of wells that do not already have an approved HOV and for which temperature cannot be adjusted downward through routine GCCS adjustments. Based on feedback provided in public comments, over 6,000 HOV requests have been submitted and reviewed by regulatory agencies, and the enhanced monitoring requirements would not apply to any of the HOV requests that have received approval. Furthermore, the concern that the enhanced monitoring requirements would continue in perpetuity is unsubstantiated. First, landfills have up to 7 days to adjust the well to achieve a lower temperature before the enhanced monitoring requirements are triggered (40 CFR 63.1961(a)(5)(vii)). Second, the enhanced monitoring can stop once the well temperature drops back to 145 °F or less. The EPA did not receive any comments on the number of wells that are operating above 145 °F without an approved HOV, which would have helped the EPA quantify how many wells would be affected and the corresponding costs. Additionally, the EPA did not receive any data on how long the wells without an approved HOV typically exceed 145 °F. Given insufficient data on the number and length of each temperature exceedance to make an estimate, the EPA has not quantified any cost impacts for the enhanced monitoring.

The EPA also contends that many of the parameters required in the enhanced monitoring are also parameters that are required to obtain an approval of an HOV request under the baseline regulations and so these costs are not an incremental cost that is not otherwise happening outside of the NESHAP amendments. For example, the Ohio EPA already requires 6 months of historical data, narrative discussion of the visual evidence of fire, and CO measurements using appropriate laboratory techniques.[6] Under the final amendments, the EPA anticipates that landfill operators will immediately implement corrective actions to lower well temperatures, as well as immediately file appeals for HOVs for their wells, if appropriate. The EPA anticipates that processing requests for HOVs will be quicker because fewer requests are expected to be submitted due to the higher temperature standard and elimination of the oxygen and nitrogen standard.

The EPA also maintains that removal of the requirement to prepare an SSM plan and removal of the associated recordkeeping and reporting requirements will not result in additional costs for new or modified facilities, but instead result in a cost savings. Owners or operators will not incur the cost of preparing an SSM plan. To meet their obligation under 40 CFR 63.1955(c) to minimize emissions during collection or control system downtime, owners or operators are expected to rely on existing standard operating procedures and safety practices. The EPA expects that some landfills may incorporate automated controls that would shut down the gas mover system and valves in the event of detection of a collection or control system malfunction. Such systems are expected to have existing corresponding written or automated standard operating procedures and safety practices.

The recordkeeping and reporting requirements will not result in additional costs for new or modified facilities. The final work practice requirements mandate a shutdown of the gas mover system and all valves within the collection and control system within 1 hour of the collection or control system not operating and then require repair efforts to proceed in a way that keeps downtime to a minimum (40 CFR 63.1958(e)(1)(i)–(ii)). A landfill demonstrates compliance with these requirements via recordkeeping as specified in 40 CFR 63.1983(c)(6)–(7). The work practice requirement to record and report all instances of downtime will not result in an increased recordkeeping and reporting burden as compared to the 2003 NESHAP. Via cross-reference to the 1996 NSPS (40 CFR part 60, subpart WWW) to (40 CFR 63.1955(a)(1)), the 2003 NESHAP already required landfill owners to keep continuous records of the indication of flow to the control device, report periods when the control device was not operating for a period exceeding 1 hour. The records required by existing regulations serve as the records of system downtime.

Note that this work practice itself does not add incremental cost to new or modified landfills subject to the proposed regulation because this requirement already appears in the

[6] Ohio EPA. *Guidance Document for Higher Operating Value Demonstrations. http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc.*

NESHAP as promulgated in 2003 at 40 CFR 63.1955(a)(1), which says affected landfills must comply with the requirements of the 1996 NSPS. 40 CFR 60.753(e) already requires owners or operators to shut down the gas mover system and close all valves in the collection and control system contributing to venting of the gas to the atmosphere within 1 hour.

Given that the costs for these enhanced monitoring requirements cannot be quantified, in addition to the fact that there are some cost savings previously documented to offset these costs,[7] the EPA concludes that the final rule is best characterized as a no-cost action.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. Because there are no costs associated with the final rule, no economic impacts are anticipated.

E. What are the benefits?

As stated in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with adjustments made to the oxygen and nitrogen wellhead operating standards, although this change has the potential to reduce emissions. Any reduction in HAP emissions would be expected to provide health benefits in the form of improved air quality and less exposure to potentially harmful chemicals.

F. What analysis of environmental justice did we conduct?

To examine the potential for any environmental justice issues that might be associated with the MSW Landfills source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the source category across different demographic groups within the populations living near facilities.[8]

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—MSW LANDFILLS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

		Population with cancer risk greater than or equal to 1 in 1 million	Population with hazard index greater than 1
	Nationwide	Source category	
Total Population	317,746,049	18,217	0
	Race by Percent		
White	62	58	0
All Other Races	38	42	0
	Race by Percent		
African American	12	13	0
Native American	0.8	0.1	0
Hispanic or Latino (includes white and nonwhite)	18	20	0
Other and Multiracial	7	8	0
	Income by Percent		
Below Poverty Level	14	15	0
Above Poverty Level	86	85	0
	Education by Percent		
Over 25 and without a High School Diploma	14	17	0
Over 25 and with a High School Diploma	86	83	0
	Linguistically Isolated by Percent		
Linguistically Isolated	6	8	0

G. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the report, *Risk and Technology Review-Analysis of Demographic Factors for Populations*

[7] U.S. EPA, *Cost Impacts of National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste (MSW) Landfills Risk and Technology Review,* May 20, 2019, Docket ID Item No. EPA–HQ–OAR–2002–0047–0081.

[8] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times above the poverty level, and linguistically isolated people.

Living Near Municipal Solid Waste Landfill Source Category Operations, available in the docket for this action.

VI. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text in 40 CFR 63.1961(a)(2)(ii) and (2)(iii)(B) that includes the IBR of ASTM D6522–11—Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (Approved December 1, 2011), as an alternative for determining oxygen for wellhead standards in 40 CFR 63.1961(a)(2). For this test method, a gas sample is continuously extracted from a duct and conveyed to a portable analyzer for determination of nitrogen oxides, CO, and oxygen gas concentrations using electrochemical cells. Analyzer design specifications, performance specifications, and test procedures are provided to ensure reliable data. This method is an alternative to EPA methods and is consistent with the methods already allowed under the 2016 NSPS and EG (subparts XXX and Cf). The ASTM standards are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org.* You may inspect a copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC; phone number: (202) 566–1744; Docket ID No. EPA–HQ–OAR–2019–0338. This IBR has been approved by the Office of the Federal Register and the method is federally enforceable under the CAA as of the effective date of this final rulemaking.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by removing the requirements for SSM plans and periodic SSM reports, removing the oxygen and nitrogen wellhead operating standards, increasing the temperature wellhead standard, revising the corrective action timeline and procedures, providing flexibility for landfills to remove controls, and adding electronic reporting.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0505. The only burden associated with the final rule is limited to affected sources becoming familiar with the changes in the final rule. The burden for respondents to review rule requirements each year is already accounted for in the previously approved information collection activities contained in the existing regulations (40 CFR part 63, subpart AAAA), which were assigned OMB control number 2060–0505. Additionally, changes to 40 CFR part 60, subpart WWW, subpart XXX, and subpart Cf only add clarifying language for affected sources and provide alternatives for any deviations from the respective standards. These changes would not increase any burden for affected sources.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action is projected to affect 738 MSW landfills, and approximately 60 of these facilities are owned by a small entity. The small entities subject to the requirements of this final rule may include private small business and small governmental jurisdictions that own or operate landfills, but the cost for complying with the final amendments is expected to be $0. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While state, local, or tribal governments own and operate landfills subject to these final amendments, the impacts resulting from this regulatory action are far below the applicable threshold.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The database used to estimate impacts of these final amendments identified one tribe, the Salt River Pima-Maricopa Indian Community, that owns three landfills potentially subject to the NESHAP. Two of these landfills are already controlling emissions—the Salt River Landfill and the Tri Cities Landfill. Although the permits for these landfills indicate they are subject to this subpart, these final changes are not expected to increase the costs. The other landfill, North Center Street Landfill, is not estimated to install controls under the NESHAP. The EPA offered to consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes in the process of developing this regulation to permit them to have meaningful and timely input into its development. A copy of the letter offering consultation is in the docket for this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental

health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and IV.A of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action involves technical standards. The EPA has decided to use voluntary consensus standards ASTM D6522–11, ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,'' as an acceptable alternative to EPA Method 3A when used at the wellhead before combustion. It is advisable to know the flammability and check the lower explosive limit of the flue gas constituents prior to sampling, in order to avoid undesired ignition of the gas. The results of ASTM D6522–11 may be used to determine nitrogen oxides and CO emission concentrations from natural gas combustion at stationary sources. This test method may also be used to monitor emissions during short-term emission tests or periodically in order to optimize process operation for nitrogen oxides and CO control. The EPA's review is documented in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2002–0047).

In this rule, the EPA is finalizing regulatory text for 40 CFR part 63, subpart AAAA that includes IBR in accordance with requirements of 1 CFR 51.5. Specifically, the EPA is incorporating by reference ASTM D6522–11. See section VI of this preamble for information on the availability of this material.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of MSW landfills has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and any emissions reductions from the final revisions will benefit these groups the most.

The documentation for this decision is contained in section IV.B and C of this preamble, and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Municipal Solid Waste Landfill Source Category Operations,* which is available in the docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 25, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Cf—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

■ 2. Section 60.34f is amended by revising the introductory text to read as follows:

§ 60.34f Operational standards for collection and control systems.

For approval, a state plan must include provisions for the operational standards in this section (as well as the provisions in §§ 60.36f and 60.37f), or the operational standards in § 63.1958 of this chapter (as well as the provisions in §§ 63.1960 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1958 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c) must:

* * * * *

■ 3. Section 60.36f is amended by revising the introductory text and paragraph (a)(3)(ii) to read as follows:

§ 60.36f Compliance provisions.

For approval, a state plan must include the compliance provisions in this section (as well as the provisions in §§ 60.34f and 60.37f), or the compliance provisions in § 63.1960 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1960 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) * * *

(3) * * *

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.38f(h)(7) as part of the next annual report. The owner or operator must keep records according to § 60.39f(e)(4).

* * * * *

■ 4. Section 60.37f is amended by revising the introductory text to read as follows:

§ 60.37f Monitoring of operations.

For approval, a state plan must include the monitoring provisions in this section, (as well as the provisions in §§ 60.34f and 60.36f) except as provided in § 60.38f(d)(2), or the monitoring provisions in § 63.1961 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1960 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

* * * * *

■ 5. Section 60.38f is amended by revising paragraphs (h) introductory, (h)(7), and (k) introductory text and adding paragraph (n) to read as follows:

§ 60.38f Reporting guidelines.

* * * * *

(h) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.33f(e)(2) using an active collection system designed in accordance with § 60.33f(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system. The initial annual report must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.39f(c)(1). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 60.34f, 60.36f, and 60.37f, the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of this paragraph.

* * * * *

(7) For any corrective action analysis for which corrective actions are required in § 60.36f(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

* * * * *

(k) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (k)(1) and (2) of this section. If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 60.34f, 60.36f, and 60.37f, the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in § 63.1981(j) of this chapter in lieu of paragraphs (k)(1) and (2) of this section.

* * * * *

(n) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 6. Section 60.39f is amended by revising paragraph (e) introductory text and adding paragraph (e)(6) to read as follows:

§ 60.39f Recordkeeping guidelines.

* * * * *

(e) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep the records in paragraph (e)(6) of this section and must keep records according to § 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

* * * * *

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961.

* * * * *

Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or after May 30, 1991, but Before July 18, 2014

■ 7. Section 60.750 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 60.750 Applicability, designation of affected facility, and delegation of authority.

(a) The provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014.

* * * * *

(d) An affected municipal solid waste landfill must continue to comply with this subpart until it:

(1) Becomes subject to the more stringent requirements in an approved and effective state or federal plan that implements subpart Cf of this part, or

(2) Modifies or reconstructs after July 17, 2014, and thus becomes subject to subpart XXX of this part.

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

■ 8. Section 60.762 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 60.762 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(iv) *Operation.* Operate the collection and control device installed to comply with this subpart in accordance with the provisions of §§ 60.763, 60.765, and 60.766; or the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter. Once the owner or operator begins to comply with the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of §§ 60.763, 60.765, and 60.766.

* * * * *

■ 9. Section 60.765 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 60.765 Compliance provisions.

(a) * * *

(5) * * *

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.767(g)(7) as part of the next annual report. The owner or operator must keep records according to § 60.768(e)(4).

* * * * *

■ 10. Section 60.767 is amended by revising paragraphs (g) introductory text, (g)(7, and (j) introductory text and adding paragraph (m) to read as follows:

§ 60.767 Reporting requirements.

* * * * *

(g) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.762(b)(2) using an active collection system designed in accordance with § 60.762(b)(2)(ii) must submit to the Administrator, following the procedure specified in paragraph (i)(2) of this section, annual reports of the recorded information in paragraphs (g)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system and must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.768(c). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of this paragraph.

* * * * *

(7) For any corrective action analysis for which corrective actions are required in § 60.765(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

* * * * *

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (j)(1) and (2) of this section. If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), the owner or operator must follow the corrective action and the corresponding timeline requirements in § 63.1981(j) of this chapter in lieu of this paragraph.

* * * * *

(m) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961, as allowed at § 60.762(b)(2)(iv), must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 11. Section 60.768 is amended by revising paragraph (e) introductory text and adding paragraph (e)(6) to read as follows:

§ 60.768 Recordkeeping requirements.

* * * * *

(e) Except as provided in § 60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), must keep the records in paragraph (e)(6) of this section and must keep records according to §§ 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

* * * * *

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 12. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 13. Section 63.14 is amended by revising paragraph (h)(94) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(94) ASTM D6522–11 Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, Approved December 1, 2011, IBR approved for § 63.1961(a) and table 3 to subpart YYYY.

* * * * *

■ 14. Subpart AAAA is revised to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

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Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills.

(a) Before September 28, 2021, all landfills described in § 63.1935 must meet the requirements of 40 CFR part 60, subpart WWW, or an approved state or federal plan that implements 40 CFR part 60, subpart Cc, and requires timely control of bioreactors and additional reporting requirements. Landfills must also meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions as specified in Table 1 to Subpart AAAA of this part and must demonstrate compliance with the operating conditions by parameter monitoring results that are within the specified ranges. Specifically, landfills must meet the following requirements of this subpart that apply before September 28, 2021, as set out in: §§ 63.1955(a), 63.1955(b), 63.1965(a), 63.1965(c), 63.1975, 63.1981(a), 63.1981(b), and 63.1982, and the definitions of ''Controlled landfill'' and ''Deviation'' in § 63.1990.

(b) Beginning no later than September 27, 2021, all landfills described in § 63.1935 must meet the requirements of this subpart. A landfill may choose to meet the requirements of this subpart rather than the requirements identified in § 63.1930(a) at any time before September 27, 2021. The requirements of this subpart apply at all times, including during periods of SSM, and the SSM requirements of the General Provisions of this part do not apply.

§ 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 63.1959.

(b) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 and that is not permanently closed as of January 16, 2003.

§ 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is an MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003, or at the time you begin operating, whichever is later.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b). If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003, and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must install and operate a collection and control system that meets the criteria in § 63.1959(b)(2) according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose

to begin gas collection and control system operation 180 days after achieving a 40-percent moisture content instead of 180 days after liquids addition, use the procedures in §§ 63.1982(c) and (d) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006, or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW; a federal plan; or an EPA-approved and effective state plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40-percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(e) and (f) to determine when the bioreactor moisture content reaches 40 percent.

§ 63.1950 When am I no longer required to comply with this subpart?

You are no longer required to comply with the requirements of this subpart when your landfill meets the collection and control system removal criteria in § 63.1957(b).

§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraph (a) or (b) of this section.

(a) Your affected source meets the control system removal criteria in § 63.1950 or the bioreactor meets the criteria for a nonproductive area of the landfill in § 63.1962(a)(3)(ii).

(b) The bioreactor portion of the landfill is a closed landfill as defined in § 63.1990, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in § 63.1981(g).

Standards

§ 63.1955 What requirements must I meet?

(a) Before September 28, 2021, if alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions have already been approved under 40 CFR part 60, subpart WWW; subpart XXX; a federal plan; or an EPA-approved and effective state or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1981(h), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3-hour monitoring block average. Beginning no later than September 28, 2021, the collection and control system design plan may include for approval collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions, as provided in § 63.1981(d)(2).

(b) If you own or operate a bioreactor that is located at an MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must meet the requirements of this subpart, including requirements in paragraphs (b)(1) and (2) of this section.

(1) You must comply with this subpart starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area.

(c) At all times, beginning no later than September 27, 2021, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if the requirements of this subpart have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1957 Requirements for gas collection and control system installation and removal.

(a) *Operation.* Operate the collection and control device in accordance with the provisions of §§ 63.1958, 63.1960, and 63.1961.

(b) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(1) The landfill is a closed landfill (as defined in § 63.1990). A closure report must be submitted to the Administrator as provided in § 63.1981(f);

(2) The gas collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flow; and

(3) Following the procedures specified in § 63.1959(c), the calculated NMOC emission rate at the landfill is less than 50 Mg/yr on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

§ 63.1958 Operational standards for collection and control systems.

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 63.1957 must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the semi-annual reports as provided in § 63.1981(h);

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the Administrator as specified in § 63.1981(d)(2);

(c) Operate each interior wellhead in the collection system as specified in § 60.753(c), except:

(1) Beginning no later than September 27, 2021, operate each interior wellhead in the collection system with a landfill gas temperature less than 62.8 degrees Celsius (145 degrees Fahrenheit).

(2) The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the Administrator for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.,* neither causing fires nor killing methanogens is acceptable).

(d)(1) Operate the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(2) Beginning no later than September 27, 2021, the owner or operator must:

(i) Conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 63.1960(d).

(ii) Conduct surface testing at all cover penetrations. Thus, the owner or operator must monitor any cover penetrations that are within an area of the landfill where waste has been placed and a gas collection system is required.

(iii) Determine the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(e) Operate the system as specified in § 60.753(e) of this chapter, except:

(1) Beginning no later than September 27, 2021, operate the system in accordance to § 63.1955(c) such that all collected gases are vented to a control system designed and operated in compliance with § 63.1959(b)(2)(iii). In the event the collection or control system is not operating:

(i) The gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating; and

(ii) Efforts to repair the collection or control system must be initiated and completed in a manner such that downtime is kept to a minimum, and the collection and control system must be returned to operation.

(2) [Reserved]

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in paragraph (b), (c), or (d) of this section are not met, corrective action must be taken as specified in § 63.1960(a)(3) and (5) or (c). If corrective actions are taken as specified in § 63.1960, the monitored exceedance is not a deviation of the operational requirements in this section.

§ 63.1959 NMOC calculation procedures.

(a) Calculate the NMOC emission rate using the procedures specified in § 60.754(a) of this chapter, except:

(1) *NMOC emission rate.* Beginning no later than September 27, 2021 the landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for k, 170 cubic meters per megagram (m^3/Mg) for L_O, and 4,000 parts per million by volume (ppmv) as hexane for the C_{NMOC}. For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^{n} 2\,k\,L_o M_i \left(e^{-kt}i\right) (C_{NMOC})\,(3.6x10^{-9}) \quad \text{(Eq. 1)}$$

Where:

M_{NMOC} = Total NMOC emission rate from the landfill, Mg/yr.

k = Methane generation rate constant, year -1.

L_o = Methane generation potential, m^3/Mg solid waste.

M_i = Mass of solid waste in the ith section, Mg.

t_i = Age of the ith section, years.

C_{NMOC} = Concentration of NMOC, ppmv as hexane.

$3.6 \times 10 - 9$ = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_oR\,(e^{-kc} - e^{-kt})\,C_{NMOC}(3.6 \times 10^{-9}) \quad \text{(Eq. 2)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, Mg/yr.

L_o = Methane generation potential, m^3/Mg solid waste.

R = Average annual acceptance rate, Mg/yr.

k = Methane generation rate constant, $year^{-1}$.

t = Age of landfill, years.

C_{NMOC} = Concentration of NMOC, ppmv as hexane.

c = Time since closure, years; for active landfill c=0 and $e^{-kc} = 1$.

3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 50 Mg/yr.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 50 Mg/yr, then the landfill owner or operator must submit an NMOC emission rate report according to § 63.1981(c) and must recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section.

(ii) If the calculated NMOC emission rate as calculated in paragraph (a)(1) of this section is equal to or greater than 50 Mg/yr, then the landfill owner must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, according to paragraphs (b)(2)(ii) and (iii) of this section;

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using EPA Method 25 or 25C of appendix A–7 to part 60. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples are taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or 25C of appendix A–7 to part 60 by 6 to convert from C_{NMOC} as carbon to C_{NMOC} as hexane. If the landfill has an active or passive gas removal system in place, EPA Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7 of subpart A), the owner or operator must submit the results according to § 63.1981(i).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (ii) of this section and use the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 50 Mg/yr, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to § 63.1981(c) and must recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section. The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 50 Mg/yr, the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months according to paragraphs (b)(2)(ii) and (iii) of this section; or

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in EPA Method 2E of appendix A–1 to part 60 of this chapter. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (ii) of this section and using a site-specific methane generation rate constant, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 50 Mg/yr.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 50 Mg/yr, the owner or operator must:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(e) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, according to paragraphs (b)(2)(ii) and (iii) of this section.

(B) [Reserved]

(ii) If the NMOC mass emission rate is less than 50 Mg/yr, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in § 63.1981(c).

The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) *Other methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (4) of this section if the method has been approved by the Administrator.

(b) Each owner or operator of an affected source having a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in paragraph (a) of this section. The NMOC emission rate must be recalculated annually, except as provided in § 63.1981(c)(1)(ii)(A).

(1) If the calculated NMOC emission rate is less than 50 Mg/yr, the owner or operator must:

(i) Submit an annual NMOC emission rate emission report to the Administrator, except as provided for in § 63.1981(c)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in paragraph (a)(1) of this section until such time as the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (b) of this section, is equal to or greater than 50 Mg/yr, the owner or operator must either: comply with paragraph (b)(2) of this section or calculate NMOC emissions using the next higher tier in paragraph (a) of this section.

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided for in § 63.1981(f).

(2) If the calculated NMOC emission rate is equal to or greater than 50 Mg/yr using Tier 1, 2, or 3 procedures, the owner or operator must either:

(i) Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified in § 63.1981(d) or calculate NMOC emissions using the next higher tier in paragraph (a) of this section. The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) Collection system. Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(B) or (C) and (b)(2)(iii) of this section within 30 months after:

(A) The first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 50 Mg.

(B) An active collection system must:

(*1*) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment;

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade;

(*3*) Collect gas at a sufficient extraction rate; and

(*4*) Be designed to minimize off-site migration of subsurface gas.

(C) A passive collection system must:

(*1*) Comply with the provisions specified in paragraphs (b)(2)(ii)(B)(1), (2), and (3) of this section; and

(*2*) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under § 258.40 of this chapter.

(iii) Control system. Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B), or (C) of this section.

(A) A non-enclosed flare designed and operated in accordance with the parameters established in § 63.11(b) except as noted in paragraph (f) of this section; or

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 ppmv, dry basis as hexane at 3-percent oxygen. The reduction efficiency or ppmv must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in paragraph (e) of this section. The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(*1*) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(*2*) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §§ 63.1961(b) through (e);

(C) A treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-British thermal unit (Btu) gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (b)(2)(iii)(A) or (B) of this section.

(D) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(c) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in § 63.1957(b)(3), using Equation 3:

$$MNMOC = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC} \quad \text{(Eq. 3)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, Mg/yr.

Q_{LFG} = Flow rate of landfill gas, m^3 per minute.

C_{NMOC} = Average NMOC concentration, ppmv as hexane.

1.89×10^{-3} = Conversion factor.

(1) The flow rate of landfill gas, Q_{LFG}, must be determined by measuring the

total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of EPA Method 2E of appendix A–1 of part 60.

(2) The average NMOC concentration, C_{NMOC}, must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in EPA Method 25 or 25C of appendix A–7 to part 60 of this chapter. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or 25C of appendix A–7 to part 60 by 6 to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance test, including any associated fuel analyses, according to § 63.1981(i).

(ii) [Reserved]

(d) For the performance test required in § 63.1959(b)(2)(iii)(B), EPA Method 25 or 25C (EPA Method 25C of appendix A–7 to part 60 of this chapter may be used at the inlet only) of appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20- ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 63.1981(d)(2). EPA Method 3, 3A, or 3C of appendix A–7 to part 60 must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), EPA Method 25A should be used in place of EPA Method 25. EPA Method 18 may be used in conjunction with EPA Method 25A on a limited basis (compound specific, *e.g.,* methane) or EPA Method 3C may be used to determine methane. The methane as carbon should be subtracted from the EPA Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landowner or operator must divide the NMOC concentration as carbon by 6 to convert from the C_{NMOC} as carbon to C_{NMOC} as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out})/(NMOC_{in}) \quad \text{(Eq. 4)}$$

Where:

$NMOC_{in}$ = Mass of NMOC entering control device.

$NMOC_{out}$ = Mass of NMOC exiting control device.

(e) For the performance test required in § 63.1959(b)(2)(iii)(A), the net heating value of the combusted landfill gas as determined in § 63.11(b)(6)(ii) is calculated from the concentration of methane in the landfill gas as measured by EPA Method 3C of appendix A to part 60 of this chapter. A minimum of three 30-minute EPA Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. EPA Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under § 63.11(b)(7) of subpart A.

(1) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by § 63.1959(c) or (e) according to § 63.1981(i).

(2) [Reserved]

(f) The performance tests required in §§ 63.1959(b)(2)(iii)(A) and (B), must be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

§ 63.1960 Compliance provisions.

(a) Except as provided in § 63.1981(d)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas collection system is in compliance with § 63.1959(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 63.1959(b)(2)(ii)(C)(1), either Equation 5 or Equation 6 must be used. The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator. The methane generation rate constant (k) and methane generation potential (L_o) kinetic factors should be those published in the most recent *Compilation of Air Pollutant Emission Factors* (AP–42) or other site-specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 63.1959(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Qm = 2L_oR\,(e^{-kc} - e^{-kt}) \quad \text{(Eq. 5)}$$

Where:

Qm = Maximum expected gas generation flow rate, m^3/yr.

L_o = Methane generation potential, m^3/Mg solid waste.

R = Average annual acceptance rate, Mg/yr.

k = Methane generation rate constant, $year^{-1}$.

t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill,

whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years.

c = Time since closure, years (for an active landfill c = 0 and $e^{-kc} = 1$).

2 = Constant.

$$Q_M = \sum_{i=1}^{n} 2kL_oM_i\left(e^{-kt_i}\right) \text{ (Eq. 6)}$$

Where:

Q_m = Maximum expected gas generation flow rate, m^3/yr.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, m^3/Mg solid waste.

M_i = Mass of solid waste in the ith section, Mg.

t_i = Age of the ith section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 in paragraph (a)(1)(i) or (ii) of this section or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 63.1959(b)(2)(ii)(B)(*2*), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 63.1959(b)(2)(ii)(B)(*3*), the owner or operator must measure gauge pressure in the gas collection header applied to each individual well monthly. Any attempted corrective measure must not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval. If a positive pressure exists, follow the procedures as specified in § 60.755(a)(3), except:

(i) Beginning no later than September 27, 2021, if a positive pressure exists, action must be initiated to correct the exceedance within 5 days, except for the three conditions allowed under § 63.1958(b).

(A) If negative pressure cannot be achieved without excess air infiltration within 15 days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after positive pressure was first measured. The owner or operator must keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(5).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(j). The owner or operator must keep records according to § 63.1983(e)(5).

(ii) [Reserved]

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), for the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must follow the procedures as specified in § 60.755(a)(5) of this chapter, except:

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), the owner or operator must monitor each well monthly for temperature. If a well exceeds the operating parameter for temperature as provided in § 63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(A) If a landfill gas temperature less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit) cannot be achieved within 15 days of the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) was first measured. The owner or operator must keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit). The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(4).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(h)(7) and (j). The owner or operator must keep records according to § 63.1983(e)(5).

(D) If a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured, according to the procedures in § 63.1961(a)(5)(vi) is greater than or equal to 1,000 ppmv the corrective action(s) for the wellhead temperature standard (62.8 degrees Celsius or 145 degrees Fahrenheit) must be completed within 15 days.

(5) An owner or operator seeking to demonstrate compliance with

(ii) For sites with known year-to-year solid waste acceptance rate:

§ 63.1959(b)(2)(ii)(B)(*4*) through the use of a collection system not conforming to the specifications provided in § 63.1962 must provide information satisfactory to the Administrator as specified in § 63.1981(c)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 63.1958(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in § 63.1981(b). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in § 63.1958(d).

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21 of appendix A–7 of part 60 of this chapter, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 ppm or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 63.1958(d).

(i) The location of each monitored exceedance must be marked and the location and concentration recorded. Beginning no later than September 27, 2021, the location must be recorded using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 ppm above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 ppm above background three times within a quarterly period, a new well or other collection device must be installed within 120 days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of EPA Method 21 of appendix A of part 60 of this chapter, except that ''methane'' replaces all references to ''VOC''.

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 ppm in air.

(3) To meet the performance evaluation requirements in section 8.1 of EPA Method 21 of appendix A of part 60 of this chapter, the instrument evaluation procedures of section 8.1 of EPA Method 21 of appendix A of part 60 must be used.

(4) The calibration procedures provided in sections 8 and 10 of EPA Method 21 of appendix A of part 60 of this chapter must be followed immediately before commencing a surface monitoring survey.

(e)(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standards in introductory paragraph § 63.1958(e), the provisions of this subpart apply at all times, except during periods of SSM, provided that the duration of SSM does not exceed 5 days for collection systems and does not exceed 1 hour for treatment or control devices. You must comply with the provisions in Table 1 to subpart AAAA that apply before September 28, 2021.

(2) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(c)(1), the provisions of this subpart apply at all times, including periods of SSM. During periods of SSM, you must comply with the work practice requirement specified in § 63.1958(e) in lieu of the compliance provisions in § 63.1960.

§ 63.1961 Monitoring of operations.

Except as provided in § 63.1981(d)(2):

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii)(B) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 63.1960(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using EPA Method 3C of appendix A–2 to part 60 of this chapter, unless an alternative test method is established as allowed by § 63.1981(d)(2).

(ii) Unless an alternative test method is established as allowed by § 63.1981(d)(2), the oxygen level must be determined by an oxygen meter using EPA Method 3A or 3C of appendix A–2 to part 60 of this chapter or ASTM

D6522–11 (incorporated by reference, see § 63.14). Determine the oxygen level by an oxygen meter using EPA Method 3A or 3C of appendix A–2 to part 60 or ASTM D6522–11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10- and 12-percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required; and

(E) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for EPA Method 3A of appendix A–2 to part 60 of this chapter or ASTM D6522–11 (incorporated by reference, see § 63.14).

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), the owner or operator must follow the procedures as specified in § 60.756(a)(2) and (3) of this chapter. Monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of EPA Method 2 of appendix A–1 to part 60 of this chapter.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of EPA Method 2 of appendix A–1 to part 60 of this chapter. Keep records specified in § 63.1983(e).

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), unless a higher operating temperature value has been approved by the Administrator under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, you must initiate enhanced monitoring at each well with a measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) as follows:

(i) Visual observations for subsurface oxidation events (smoke, smoldering ash, damage to well) within the radius of influence of the well.

(ii) Monitor oxygen concentration as provided in paragraph (a)(2) of this section;

(iii) Monitor temperature of the landfill gas at the wellhead as provided in paragraph (a)(4) of this section.

(iv) Monitor temperature of the landfill gas every 10 vertical feet of the well as provided in paragraph (a)(6) of this section.

(v) Monitor the methane concentration with a methane meter using EPA Method 3C of appendix A–6 to part 60, EPA Method 18 of appendix A–6 to part 60 of this chapter, or a portable gas composition analyzer to monitor the methane levels provided that the analyzer is calibrated and the analyzer meets all quality assurance and quality control requirements for EPA Method 3C or EPA Method 18.

(vi) Monitor carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyze that sample using EPA Method 10 of appendix A–4 to part 60 of this chapter, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; and

(B) Collect and analyze the sample from the wellhead using EPA Method 10 of appendix A–4 to part 60 to measure carbon monoxide concentrations.

(vii) The enhanced monitoring this paragraph (a)(5) must begin 7 days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit); and

(viii) The enhanced monitoring in this paragraph (a)(5) must be conducted on a weekly basis. If four consecutive weekly carbon monoxide readings are under 100 ppmv, then enhanced monitoring may be decreased to monthly. However, if carbon monoxide readings exceed 100 ppmv again, the landfill must return to weekly monitoring.

(ix) The enhanced monitoring in this paragraph (a)(5) can be stopped once a higher operating value is approved, at which time the monitoring provisions issued with the higher operating value should be followed, or once the measurement of landfill gas temperature at the wellhead is less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit).

(6) For each wellhead with a measurement of landfill gas temperature greater than or equal to 73.9 degrees Celsius (165 degrees Fahrenheit), annually monitor temperature of the landfill gas every 10 vertical feet of the well. This temperature can be monitored either with a removable thermometer, or using temporary or permanent thermocouples installed in the well.

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame; and

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least

once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the Administrator as provided in § 63.1981(d)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator must review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in § 63.1962 or seeking to monitor alternative parameters to those required by §§ 63.1958 through 63.1961 must provide information satisfactory to the Administrator as provided in § 63.1981(d)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500-ppm surface methane operational standard in § 63.1958(d) must monitor surface concentrations of methane according to the procedures in § 63.1960(c) and the instrument specifications in § 63.1960(d). If you are complying with the 500-ppm surface methane operational standard in § 63.1958(d)(2), for location, you must determine the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters and the coordinates must be in decimal degrees with at least five decimal places. In the semi-annual report in 63.1981(i), you must report the location of each exceedance of the 500-ppm methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii)(C) using a landfill gas treatment system must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). Beginning no later than September 27, 2021, each owner or operator must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in § 63.1983(b)(5)(ii). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (a), (b), (c), (d), and (g) of this section apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable. Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c)(1), (d)(2), and (e)(1), the standards apply at all times.

§ 63.1962 Specifications for active collection systems.

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(i) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator as provided in § 63.1981(d)(2) and (3):

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: Depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 63.1983(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area and must be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request. A separate NMOC emissions estimate must be made for each section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2\ k\ L_o M_i (e^{-kt_i})\ (C_{NMOC})\ (3.6 \times 10^{-9})\ \text{(Eq. 7)}$$

Where:

Q_i = NMOC emission rate from the ith section, Mg/yr.

k = Methane generation rate constant, year $^{-1}$.

L_o = Methane generation potential, m^3/Mg solid waste.

M_i = Mass of the degradable solid waste in the ith section, Mg.

t_i = Age of the solid waste in the ith section, years.

C_{NMOC} = Concentration of NMOC, ppmv.

3.6×10^{-9} = Conversion factor.

(B) If the owner/operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.,* separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in § 63.1959(c) or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for k and C_{NMOC} determined in field testing must be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for k, L_o and C_{NMOC} provided in § 63.1959(a)(1) or the alternative values from § 63.1959(a)(5) must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii) must construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must convey the landfill gas to a control system in compliance with § 63.1959(b)(2)(iii) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with § 63.1960(a)(1).

General and Continuing Compliance Requirements

§ 63.1964 How is compliance determined?

Compliance is determined using performance testing, collection system monitoring, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data collected under § 63.1961(b)(1), (c)(1), and (d) are used to demonstrate compliance with the operating standards for control systems. If a deviation occurs, you have failed to meet the control device operating standards described in this subpart and have deviated from the requirements of this subpart.

(a) Before September 28, 2021, you must develop a written SSM plan according to the provisions in § 63.6(e)(3) of subpart A. A copy of the SSM plan must be maintained on site. Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

(b) After September 27, 2021, the SSM provisions of § 63.6(e) of subpart A no longer apply to this subpart and the SSM plan developed under paragraph (a) of this section no longer applies. Compliance with the emissions standards and the operating standards of § 63.1958 of this subpart is required at all times.

§ 63.1965 What is a deviation?

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in § 63.1983(c)(1) are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) Before September 28, 2021, a deviation occurs when a SSM plan is not developed or maintained on site and when an affected source fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before September 28, 2021, averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW (§ 60.758(b)(2)(i) for average combustion temperature and § 60.758(c) for 3-hour average combustion temperature for enclosed combustors), except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning

no later than September 27, 2021, averages are calculated according to §§ 63.1983(b)(2)(i) and 63.1983(c)(1)(i) and the data collected during the events listed in paragraphs (a) through (d) of this section are included in any average computed under this subpart.

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1981 What reports must I submit?

You must submit the reports specified in this section and the reports specified in Table 1 to this subpart. If you have previously submitted a design capacity report, amended design capacity report, initial NMOC emission rate report, initial or revised collection and control system design plan, closure report, equipment removal report, or initial performance test under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the design capacity report in paragraph (a) of this section, the amended design capacity report in paragraph (b) of this section, the initial NMOC emission rate report in paragraph (c) of this section, the initial collection and control system design plan in paragraph (d) of this section, the revised design plan in paragraph (e) of this section, the closure report in paragraph (f) of this section, the equipment removal report in paragraph (g) of this section, and the initial performance test report in paragraph (i) of this section. You do not need to re-submit the report(s). However, you must include a statement certifying prior submission of the respective report(s) and the date of submittal in the first semi-annual report required in this section.

(a) *Initial design capacity report.* The initial design capacity report must contain the information specified in § 60.757(a)(2) of this chapter, except beginning no later than September 28, 2021, the report must contain:

(1) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(2) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either Mg or m^3 for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Mg or 2.5 million m^3, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) *Amended design capacity report.* An amended design capacity report must be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million Mg and 2.5 million m^3. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 63.1983(f).

(c) *NMOC emission rate report.* Each owner or operator subject to the requirements of this subpart must submit a copy of the latest NMOC emission rate report that was submitted according to § 60.757(b) of this chapter or submit an NMOC emission rate report to the Administrator initially and annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate. If you have submitted an annual report under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the annual NMOC emission rate report in this paragraph. You do not need to re-submit the annual report for the current year. Beginning no later than September 27, 2021, the report must meet the following requirements:

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 63.1959(a) or (b), as applicable.

(i) The initial NMOC emission rate report must be submitted no later than 90 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(ii) Subsequent NMOC emission rate reports must be submitted annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section.

(A) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 50 Mg/yr in each of the next 5 consecutive years, the owner or operator may elect to submit, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the Administrator. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(B) The report must be submitted following the procedure specified in paragraph (l)(2) of this section.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 63.1959(b)(2), during such time as the collection and control system is in operation and in compliance with §§ 63.1958 and 63.1960.

(d) *Collection and control system design plan.* Each owner or operator

subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator for approval according to § 60.757(c) of this chapter and the schedule in § 60.757(c)(1) and (2). Beginning no later than September 27, 2021, each owner or operator subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator according to paragraphs (d)(1) through (6) of this section. The collection and control system design plan must be prepared and approved by a professional engineer.

(1) The collection and control system as described in the design plan must meet the design requirements in § 63.1959(b)(2).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§ 63.1957 through 63.1983 proposed by the owner or operator.

(3) The collection and control system design plan must either conform with specifications for active collection systems in § 63.1962 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 63.1962.

(4) Each owner or operator of an MSW landfill affected by this subpart must submit a collection and control system design plan to the Administrator for approval within 1 year of becoming subject to this subpart.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (d)(6) of this section. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

(e) *Revised design plan.* Beginning no later than September 27, 2021, the owner or operator who has already been required to submit a design plan under paragraph (d) of this section must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (d) of this section.

(f) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of waste acceptance cessation. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of § 258.60 of this chapter. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 63.9(b) of subpart A.

(g) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report as provided in § 60.757(e) of this chapter. Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) Beginning no later than September 27, 2021, the equipment removal report must contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, or information that demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's Central Data Exchange (CDX); and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 Mg or greater of NMOC per year. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 63.1957(b) have been met.

(h) *Semi-annual report.* The owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in accordance with § 63.1959(b)(2)(ii) must submit to the Administrator semi-annual reports. Beginning no later than September 27, 2021, you must submit the report, following the procedure specified in paragraph (l) of this section. The initial report must be submitted within 180 days of installation and startup of the collection and control system and must include the initial performance test report required under § 63.7 of subpart A, as applicable. In the initial report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 63.1983(c). The semi-annual reports must contain the information in paragraphs (h)(1) through (8) of this section.

(1) Number of times that applicable parameters monitored under § 63.1958(b), (c), and (d) were exceeded and when the gas collection and control system was not operating under § 63.1958(e), including periods of SSM. For each instance, report the date, time, and duration of each exceedance.

(i) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(3) were exceeded. For each instance, report the date, time, and duration of each exceedance.

(ii) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(4) were exceeded. For each instance, report the date, time, and duration of each exceedance.

(iii) Beginning no later than September 27, 2021, number of times the parameters for the site-specific treatment system in § 63.1961(g) were exceeded.

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 63.1961.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500-ppm methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Beginning no later than September 27, 2021, for location, you record the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 63.1960(a)(3) and (4), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 63.1960(a)(3)(i) or (a)(5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(8) Each owner or operator required to conduct enhanced monitoring in §§ 63.1961(a)(5) and (6) must include the results of all monitoring activities conducted during the period.

(i) For each monitoring point, report the date, time, and well identifier along with the value and units of measure for oxygen, temperature (wellhead and downwell), methane, and carbon monoxide.

(ii) Include a summary trend analysis for each well subject to the enhanced monitoring requirements to chart the weekly readings over time for oxygen, wellhead temperature, methane, and weekly or monthly readings over time, as applicable for carbon monoxide.

(iii) Include the date, time, staff person name, and description of findings for each visual observation for subsurface oxidation event.

(i) *Initial performance test report.* Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must include the following information with the initial performance test report required under § 63.7 of subpart A:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit information regarding corrective actions according to paragraphs (j)(1) and (2) of this section.

(1) For corrective action that is required according to § 63.1960(a)(3) or (4) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(2) For corrective action that is required according to § 63.1960(a)(3) or (4) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(k) *24-hour high temperature report.* Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1) and a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured is greater than or equal to 1,000 ppmv, then you must report the date, time, well identifier, temperature and carbon monoxide reading via email to the Administrator within 24 hours of the measurement unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf.

(l) *Electronic reporting.* Beginning no later than September 27, 2021, the owner or operator must submit reports electronically according to paragraphs (l)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (l)(1)(i) through (iii) of this section.

(i) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test. Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated

through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(ii) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (l)(1)(i) of this section.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via CEDRI. CEDRI can be accessed through the EPA's CDX. The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). Once the spreadsheet template upload/forms for the reports have been available in CEDRI for 90 days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. The NMOC emission rate reports, semi-annual reports, and bioreactor 40-percent moisture reports should be electronically reported as a spreadsheet template upload/form to CEDRI. If the reporting forms specific to this subpart are not available in CEDRI at the time that the reports are due, the owner or operator must submit the reports to the Administrator at the appropriate address listed in § 63.13 of subpart A.

(m) *Claims of EPA system outage.* Beginning no later than September 27, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to comply timely with the reporting requirement. To assert a claim of EPA system outage, you must meet the following requirements:

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(n) *Claims of force majeure.* Beginning no later than September 2, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to comply timely with the reporting requirement. To assert a claim of force majeure, you must meet the following requirements:

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 63.1982 What records and reports must I submit and keep for bioreactors or liquids addition other than leachate?

Submit reports as specified in this section and § 63.1981. Keep records as specified in this section and § 63.1983.

(a) For bioreactors at new affected sources you must submit the initial semi-annual compliance report and performance test results described in § 63.1981(h) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2).

(b) If you must submit a semi-annual compliance report for a bioreactor as well as a semi-annual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semi-annual compliance report for the bioreactor according to paragraphs (b)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semi-annual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semi-annual compliance report for the bioreactor until the date the initial or subsequent semi-annual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semi-annual compliance report by no more than 12 months after the due date for submitting the initial semi-annual compliance report and performance test results described in § 63.1981(h) for the bioreactor. The report must cover the time period since the previous semi-annual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semi-annual report, all subsequent semi-annual reports for the bioreactor must be submitted every 6 months on the same date the semi-annual report for the conventional portion of the landfill is due.

(c) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(b), and paragraphs (a) and (b) of this section, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(d) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (e) of this section for 5 years. Within 90 days after the bioreactor achieves 40-percent moisture content, report the results of the calculation, the date the bioreactor achieved 40-percent moisture content by weight, and the date you plan to begin collection and control system operation to the Administrator. Beginning no later than September 27, 2021, the reports should be submitted following the procedure specified in § 63.1981(l)(2).

§ 63.1983 What records must I keep?

You must keep records as specified in this subpart. You must also keep records as specified in the general provisions of 40 CFR part 63 as shown in Table 1 to this subpart.

(a) Except as provided in § 63.1981(d)(2), each owner or operator of an MSW landfill subject to the provisions of § 63.1959(b)(2)(ii) and (iii) of this chapter must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered § 63.1959(b), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in § 63.1960(a)(1).

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in § 63.1962(a)(1) and (2).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 63.1959(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(B)(*1*) through use of a boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(A) through use of a non-enclosed flare, the flare type (*i.e.,* steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in § 63.11; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(C) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan.* Beginning no later than September 27, 2021, the owner or operator must prepare a site-specific treatment monitoring plan to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) List of responsible staff (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems (CMS).

(c) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill subject to the

provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 63.1961 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under § 63.1981(h):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million Btu per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with § 63.1959(b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under § 63.1961(b)(2)(ii), (c)(2)(ii), and (g)(2).

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 63.1959(b)(2)(iii) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state, local, tribal, or federal regulatory requirements.

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 63.1961(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in accordance with § 63.1959(b)(2)(ii) must keep records of periods when the collection system or control device is not operating.

(6) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), the date, time, and duration of each startup and/or shutdown period, recording the periods when the affected source was subject to the standard applicable to startup and shutdown.

(7) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), in the event that an affected unit fails to meet an applicable standard, record the information below in this paragraph:

(i) For each failure record the date, time and duration of each failure and the cause of such events (including unknown cause, if applicable).

(ii) For each failure to meet an applicable standard; record and retain a list of the affected sources or equipment.

(iii) Record actions taken to minimize emissions in accordance with the general duty of § 63.1955(c) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(8) Beginning no later than September 27, 2021, in lieu of the requirements specified in § 63.8(d)(3) of subpart A you must keep the written procedures required by § 63.8(d)(2) on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(d) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under § 63.1960(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 63.1962(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 63.1962(a)(3)(ii).

(e) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the following:

(1) All collection and control system exceedances of the operational standards in § 63.1958, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the control provisions of this subpart must keep records of each wellhead temperature monitoring value of greater than 55 degrees Celsius (131 degrees Fahrenheit), each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent, except:

(i) When an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the compliance provisions for wellhead temperature in § 63.1958(c)(1), but no later than September 27, 2021, the records of each wellhead temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above instead of values greater than 55 degrees Celsius (131 degrees Fahrenheit).

(ii) Each owner or operator required to conduct the enhanced monitoring provisions in § 63.1961(a)(5), must also keep records of all enhanced monitoring activities.

(iii) Each owner or operator required to submit the *24-hour high temperature report in* § 63.1981(k), must also keep a record of the email transmission.

(3) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(A) or (a)(4)(i)(A), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(B) or (a)(4)(i)(B), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the

positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(C) or (a)(4)(i)(C), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the Administrator.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million Mg or 2.5 million m^3, as provided in the definition of ''design capacity,'' must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 63.1961(a)(1) through (5).

(h) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), you must keep the following records.

(1) Records of the landfill gas temperature on a monthly basis as monitored in § 63.1960(a)(4).

(2) Records of enhanced monitoring data at each well with a measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) as gathered in § 63.1961(a)(5) and (6).

(i) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

(ii) [Reserved]

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency as well as the EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional office to find out if this subpart is delegated to a state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the standards in §§ 63.1955 through 63.1962. Where this subpart references 40 CFR part 60, subpart WWW, the cited provisions will be delegated according to the delegation provisions of 40 CFR part 60, subpart WWW. For this subpart, the EPA also retains the authority to approve methods for determining the NMOC concentration in § 63.1959(a)(3) and the method for determining the site-specific methane generation rate constant k in § 63.1959(a)(4).

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, Cf, WWW, and XXX; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section that follows:

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Bioreactor means an MSW landfill or portion of an MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

Closed area means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under § 63.9(b). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i) of this chapter or in compliance with § 63.1959(b)(2)(i).

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

Cover penetration means a wellhead, a part of a landfill gas collection or operations system, and/or any other object that completely passes through the landfill cover. The landfill cover includes that portion which covers the waste, as well as the portion which borders the waste extended to the point where it is sealed with the landfill liner or the surrounding land mass. Examples of what is not a penetration for purposes of this subpart include but are not limited to: Survey stakes, fencing including litter fences, flags, signs, utility posts, and trees so long as these items do not pass through the landfill cover.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted

for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Mg or 2.5 million m^3, the calculation must include a site-specific density, which must be recalculated annually.

Deviation before September 28, 2021, means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emissions limitation (including any operating limit) or work practice requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

Deviation beginning no later than September 27, 2021, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, or operating limit, or work practice requirement; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emissions limitation means any emission limit, opacity limit, operating limit, or visible emissions limit.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subparts Cc or Cf. An approved state plan becomes effective on the date specified in the document published in the **Federal Register** announcing EPA's approval.

EPA approved Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc or subpart Cf.

Federal plan means the EPA plan to implement 40 CFR part 60, subparts Cc or Cf for existing MSW landfills located in states and Indian country where state plans or tribal plans are not currently in effect. On the effective date of an EPA approved state or tribal plan, the Federal Plan no longer applies. The Federal Plan implementing 40 CFR part 60, subpart Cc is found at 40 CFR part 62, subpart GGG.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (*i.e.,* fan, blower, compressor) used to transport landfill gas through the header system.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, 40 CFR parts 264 and 265. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this chapter.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Leachate recirculation means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

Modification means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity after November 7, 2000. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of § 63.1959.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not

limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of an exceedance of a standard operating parameter at a wellhead.

Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities.

Sludge means the term sludge as defined in § 258.2 of this chapter.

Solid waste means the term solid waste as defined in § 258.2 of this chapter.

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this subpart.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

Treated landfill gas means landfill gas processed in a treatment system as defined in this subpart.

Treatment system means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

As specified in this subpart, you must meet each requirement in the following table that applies to you. The owner or operator may begin complying with the provisions that apply no later than September 27, 2021, any time before that date.

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
§ 63.1(a)	Applicability: General applicability of NESHAP in this part.	Yes	Yes.	
§ 63.1(b)	Applicability determination for stationary sources.	Yes	Yes.	
§ 63.1(c)	Applicability after a standard has been set	No [1]	Yes.	
§ 63.1(e)	Applicability of permit program before relevant standard is set.	Yes	Yes.	
§ 63.2	Definitions	Yes	Yes.	
§ 63.3	Units and abbreviations	No [1]	Yes.	
§ 63.4	Prohibited activities and circumvention	Yes	Yes.	
§ 63.5(a)	Construction/reconstruction	No [1]	Yes.	
§ 63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	Yes	Yes.	
§ 63.5(d)	Application for approval of construction or reconstruction.	No [1]	Yes.	
§ 63.5(e) and (f)	Approval of construction and reconstruction	No [1]	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements—applicability.	No [1]	Yes.	
§ 63.6(b) and (c)	Compliance dates for new, reconstructed, and existing sources.	No [1]	Yes.	
§ 63.6(e)(1)(i)–(ii)	Operation and maintenance requirements	Yes	No	See § 63.1955(c) for general duty requirements.
63.6(e)(3)(i)–(ix)	SSM plan	Yes	No.	
63.6(f)(1)	Exemption of nonopacity emission standards during SSM.	Yes	No.	
§ 63.6(f)(2) and (3)	Compliance with nonopacity emission standards.	Yes	Yes.	
§ 63.6(g)	Use of an alternative nonopacity standard	No [1]	Yes.	
§ 63.6(h)	Compliance with opacity and visible emission standards.	No [1]	No	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	No [1]	Yes.	
§ 63.6(j)	Exemption from compliance with emission standards.	No [1]	Yes.	
§ 63.7	Performance testing	No [1]	Yes.	
§ 63.7(e)(1)	Conditions for performing performance tests	No [1]	No	40 CFR 63.1959(f) specifies the conditions for performing performance tests.
§ 63.8(a) and (b)	Monitoring requirements—Applicability and conduct of monitoring.	No [1]	Yes.	
§ 63.8(c)(1)	Operation and Maintenance of continuous emissions monitoring system.	No [1]	Yes.	

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA—Continued

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
§ 63.8(c)(1)(i)	Operation and Maintenance Requirements	No [1]	No	Unnecessary due to the requirements of § 63.8(c)(1) and the requirements for a quality control plan for monitoring equipment in § 63.8(d)(2).
§ 63.8(c)(1)(ii)	Operation and Maintenance Requirements	No [1]	No.	
§ 63.8(c)(1)(iii)	SSM plan for monitors	No [1]	No.	
§ 63.8(c)(2)–(8)	Monitoring requirements	No [1]	Yes.	
§ 63.8(d)(1)	Quality control for monitors	No [1]	Yes.	
§ 63.8(d)(2)	Quality control for monitors	No [1]	Yes.	
§ 63.8(d)(3)	Quality control records	No [1]	No	See § 63.1983(c)(8).
§ 63.9(a), (c), and (d)	Notifications	No [1]	Yes.	
§ 63.9(b)	Initial notifications	No [1]	Yes [2].	
§ 63.9(e)	Notification of performance test	No [1]	Yes [2].	
§ 63.9(f)	Notification of visible emissions/opacity test	No [1]	No	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.9(g)	Notification when using CMS	No [1]	Yes [2].	
§ 63.9(h)	Notification of compliance status	No [1]	Yes [2].	
§ 63.9(i)	Adjustment of submittal deadlines	No [1]	Yes.	
§ 63.9(j)	Change in information already provided	No [1]	Yes.	
§ 63.10(a)	Recordkeeping and reporting—general	No [1]	Yes.	
§ 63.10(b)(1)	General recordkeeping	No [1]	Yes.	
§ 63.10(b)(2)(i)	Startup and shutdown records	Yes	No	See § 63.1983(c)(6) for recordkeeping for periods of startup and shutdown.
§ 63.10(b)(2)(ii)	Recordkeeping of failures to meet a standard	Yes	No	See § 63.1983(c)(6)–(7) for recordkeeping for any exceedance of a standard.
§ 63.10(b)(2)(iii)	Recordkeeping of maintenance on air pollution control equipment.	Yes	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions taken to minimize emissions during SSM.	Yes	No	See § 63.1983(c)(7) for recordkeeping of corrective actions to restore compliance.
§ 63.10(b)(vi)	Recordkeeping for CMS malfunctions	No [1]	Yes.	
§ 63.10(b)(vii)–(xiv)	Other Recordkeeping of compliance measurements.	No [1]	Yes.	
§ 63.10(c)	Additional recordkeeping for sources with CMS.	No [1]	No	See § 63.1983 for required CMS recordkeeping.
§ 63.10(d)(1)	General reporting	No [1]	Yes.	
§ 63.10(d)(2)	Reporting of performance test results	No [1]	Yes.	
§ 63.10(d)(3)	Reporting of visible emission observations	No [1]	Yes.	
§ 63.10(d)(4)	Progress reports for compliance date extensions.	No [1]	Yes.	
§ 63.10(d)(5)	SSM reporting	Yes	No	All exceedances must be reported in the semi-annual report required by § 63.1981(h).
§ 63.10(e)	Additional reporting for CMS systems	No [1]	Yes.	
§ 63.10(f)	Recordkeeping/reporting waiver	No [1]	Yes.	
§ 63.11	Control device requirements/flares	No [1]	Yes	§ 60.18 is required before September 27, 2021. However, § 60.18 and 63.11 are equivalent.
§ 63.12(a)	State authority	Yes	Yes.	
§ 63.12(b)–(c)	State delegations	No [1]	Yes.	
§ 63.13	Addresses	No [1]	Yes.	
§ 63.14	Incorporation by reference	No [1]	Yes.	
§ 63.15	Availability of information and confidentiality	Yes	Yes.	

[1] Before September 28, 2021, this subpart requires affected facilities to follow 40 CFR part 60, subpart WWW, which incorporates the General Provisions of 40 CFR part 60.

[2] If an owner or operator has complied with the requirements of this paragraph under either 40 CFR part 60, subpart WWW or subpart XXX, then additional notification is not required.

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